

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS

In the Matter of: )  
 )  
 )  
PUBLIC HEARING TO DETERMINE )  
WHETHER TO ADOPT A DRAFT CEASE )  
AND DESIST ORDER AGAINST )  
CALIFORNIA AMERICAN WATER. )  
 )  
~~~~~ )

JOE SERNA JR./CALEPA BUILDING  
1001 I STREET  
COASTAL HEARING ROOM  
SACRAMENTO, CALIFORNIA

HEARING PHASE II, VOLUME V  
FRIDAY, AUGUST 8, 2008  
9:04 A.M.

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CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 13196

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Mr. Tom Bunosky, California American Water Company

Mr. David Stephenson, California American Water  
Company

Mr. George Riley, Public Trust Alliance

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

## 1 P R O C E E D I N G S

2 --o0o--

3 CO-HEARING OFFICER BAGGETT: Good morning.  
4 Let's go. Before we begin with Cal Am's case-in-chief,  
5 are there any other motions or objections or comments  
6 from any of the parties?

7 MR. LAREDO: You ground us down.

8 CO-HEARING OFFICER BAGGETT: Amazing. With  
9 that, Mr. Rubin, you're up.

10 MR. RUBIN: Good morning. Jon Rubin for  
11 California American Water. This morning we'll be  
12 presenting our case-in-chief, and I'll begin with my  
13 opening statement.

14 As we are all very much aware, this proceeding  
15 presents two questions. The first question is whether  
16 California American Water has taken or failed to take  
17 action which would warrant the issuance of a cease and  
18 desist order.

19 We've heard evidence during the first phase of  
20 this proceeding that California American Water has  
21 diligently pursued an alternative water supply,  
22 spending and continuing to spend millions of dollars  
23 and thousands of hours to bring a new supply on line.  
24 Simply, there was no evidence presented to support the  
25 issuance of a cease and desist order. California

1 American Water is in compliance with Condition 2 of  
2 Order 95-10.

3           Granted, there was testimony from the  
4 Prosecution Team's witnesses as well as witnesses from  
5 other participants expressing their frustration with  
6 the amount of time it has taken to put in place an  
7 alternative water supply. In their view, it has simply  
8 taken too long, and there should have been an easier  
9 way to bring thousands of acre feet of water to the  
10 area.

11           California American Water agrees. It should  
12 not be as hard as it is. At times, the process may be  
13 frustrating. However, it is a fact of life in  
14 California, the results from the need to comply with  
15 many legal mandates like those requiring a project to  
16 be subject to voter approval or to environmental review  
17 through a process involving extensive public input.

18           Issuing a cease and desist order against the  
19 one party that has been consistently funding and  
20 maintaining the effort to reduce withdrawals from the  
21 Carmel River makes no sense at all. A cease and desist  
22 order cannot issue based upon frustration with the  
23 process.

24           For these reasons, the State Water Resources  
25 Control Board cannot reach the second question, which

1 is the subject of this phase, and asks what remedy if  
2 any should the State Water Resources Control Board  
3 include in a cease and desist order.

4           Notwithstanding, the Prosecution Team and  
5 others supporting the issuance of a cease and desist  
6 order advocate for remedies, remedies that are  
7 unusually severe and unnecessarily oppressive. The  
8 basis for their position is simple. They believe the  
9 status quo is unacceptable, and they want to create  
10 incentives.

11           Clearly, the approach of the Prosecution Team  
12 and others of proposing an arbitrary ratcheting down of  
13 the Carmel River withdrawals without regard for  
14 hydrologic conditions and through enforcement against  
15 the water utility that lacks the legal ability to cut  
16 off supplies to their end users is illogical and  
17 unreasonable.

18           If the State Water Resources Control Board  
19 decides to issue a remedy, it should propose a remedy  
20 that would help solve the problem, not exacerbate it.  
21 It should commit to working closely with the community  
22 to facilitate and expedite a long-term water supply  
23 solution.

24           Turning to the evidence before you, it has and  
25 will continue to show that no new measures are needed

1 to provide protection to fisheries or other Trust  
2 resources during the period California American Water  
3 continues to pursue an alternative water supply.

4 Like their position during the first phase of  
5 this proceeding, the Prosecution Team and others  
6 supporting a remedy that imposes new fishery measures  
7 selectively present the facts and events that have  
8 occurred over time on the Monterey Peninsula. They  
9 present an incomplete picture of the status quo.

10 The Prosecution Team and others disregard much  
11 of the changes that have occurred since 1995, changes  
12 that mitigate for the impact of California American  
13 Water extracting from the Carmel River more than  
14 3,376 acre feet of water available under its water  
15 rights.

16 They ignore the management and oversight by  
17 federal, state, and local agencies, including the State  
18 Water Resources Control Board, National Marine  
19 Fisheries Service, United States Fish and Wildlife  
20 Service, and California Department of Fish and Game,  
21 particularly management and oversight since 1995.

22 They ignore the extensive improvements that  
23 have resulted from actions undertaken by the interests  
24 on the Monterey Peninsula, including California  
25 American Water, particularly actions undertaken since

1 the issuance of Order 95-10.

2           Specifically, the Prosecution Team and others  
3 do not fully recognize implementation of all of the  
4 actions required under Order 95-10 which are intended  
5 to mitigate for the effects of California American  
6 Water's extractions until such time as it is able to  
7 obtain alternative water rights to Carmel River water  
8 or rights to water from other sources.

9           In Order 95-10, the State Water Resources  
10 Control Board balanced the competing water supply needs  
11 of people on the Monterey Peninsula against the needs  
12 of Trust resources. The State Water Resources Control  
13 Board considered impacts to Trust resources that might  
14 occur as a result of California American Water  
15 extracting up to and in excess of 14,106 acre feet of  
16 Carmel River water.

17           Order 95-10 balances and considers the  
18 interests. It includes mitigation measures to protect  
19 Public Trust resources while California American Water  
20 pursues an alternative supply.

21           The Prosecution Team and others do not  
22 recognize that in 2001 and again in 2006 California  
23 American Water entered into agreements with the  
24 National Marine Fisheries Service which, according to  
25 the National Marine Fisheries Service, are intended to

1 maximize Carmel River Basin's substantial contribution  
2 toward recovering the South-Central California Coast  
3 steelhead population.

4           The Prosecution Team and others do not  
5 recognize that California American Water has annually  
6 entered into a Memorandum of Agreement with the  
7 California Department of Fish and Game which is  
8 intended to maximize surface flows into the Carmel  
9 River below San Clemente Dam.

10           The Prosecution Team and others do not  
11 recognize that the Monterey Peninsula Water Management  
12 District approves quarterly water budgets, budgets  
13 developed with input and oversight from NOAA Fisheries  
14 as well as the Department of Fish and Game, among  
15 others.

16           The Prosecution Team and others do not  
17 recognize that interests in the Monterey Peninsula,  
18 including California American Water, have undertaken  
19 significant additional activities to further mitigate  
20 and restore fish and wildlife within the Carmel River  
21 Basin, like the contribution of treated wastewater to  
22 the Carmel Lagoon.

23           As a result, the Prosecution Team and others  
24 fail to appreciate the significant recovery in the  
25 Carmel River's riparian corridor that has occurred

1 since 1995, a riparian corridor that has seen 46 1/2  
2 percent improvement between 1986 and 2001 alone.

3 And as a result, the Prosecution Team and  
4 others fail to appreciate the significant improvements  
5 in the Carmel River's Trust resources including an  
6 increase in the steelhead population from the late  
7 1980s to the mid 2000s which NOAA Fisheries would  
8 characterize as significant, and 2008 juvenile  
9 steelhead rescues of record high numbers. Indeed, all  
10 of the failures of the Prosecution Team and others are  
11 reflected in their proposed remedies.

12 The evidence has shown and will continue to  
13 show that the proposed remedies are made with little or  
14 no regard for their impact on the people on the  
15 Monterey Peninsula. The proposals are made with little  
16 or no knowledge of California American Water's  
17 distribution system. And the proposals are made with  
18 little or no support from analyses that could survive  
19 scientific scrutiny.

20 In fact, we have already heard testimony that  
21 prior to presenting proposed remedies, no one analyzed  
22 the relationship between surface flows and subsurface  
23 extractions by California American Water.

24 No one has analyzed the relationship between  
25 diversions by California American Water and the impact

1 on riparian habitat. And no one has analyzed the  
2 relationship between extractions by California American  
3 Water and the abundance of steelhead.

4 No one has even considered the relative effect  
5 of California American Water against all of the other  
6 factors potentially affecting steelhead.

7 As a result, no one testified with any degree  
8 of certainty of the benefits to Public Trust resources  
9 that would likely result from any of the proposed  
10 remedies; thus, there is no reliable evidence to  
11 support a conclusion that improvements in the Carmel  
12 River riparian corridor will result from reductions in  
13 the amount of subsurface water California American  
14 Water otherwise would have extracted from the Carmel  
15 River.

16 There is also no reliable evidence to support  
17 a conclusion that improvements in fish abundance will  
18 result from reductions in the amount of subsurface  
19 water California American Water would otherwise have  
20 extracted from the Carmel River.

21 Given all these failures, the State Water  
22 Resources Control Board cannot impose the remedies  
23 proposed by the Prosecution Team or others.

24 Some have suggested that the State Water  
25 Resources Control Board should act simply to provide an

1 incentive.

2 Placing aside for the moment the legality of  
3 imposing on California American Water a cease and  
4 desist order to allegedly motivate others, consider:  
5 The dedication by those on the Monterey Peninsula has  
6 resulted in the community currently meeting or  
7 exceeding the 20 percent conservation called for by  
8 Governor Schwarzenegger earlier this year.

9 Consider as well: The proposed remedies would  
10 cause the citizens of the Monterey Peninsula to live  
11 under a regulatory drought likely more severe than the  
12 conditions which prompted Governor Schwarzenegger  
13 earlier this year to issue his Executive Order S-06-08,  
14 an order compelling state agencies to identify  
15 investor-owned utilities at risk of experiencing water  
16 and safety impacts and mitigate for such impacts.

17 For all of those reasons, if the State Water  
18 Resources Control Board decides to issue a cease and  
19 desist order, it should not impose on California  
20 American Water additional measures related to Trust  
21 resources. Substantial evidence has not and will not  
22 be presented to support them.

23 If the State Water Resources Control Board  
24 decides to issue a remedy, it must be tailored to the  
25 basis for liability. In this case, liability can only

1 be found if California American Water is determined to  
2 lack diligence in its pursuit of an alternative water  
3 supply, which has not been shown and will not be shown.

4           Nonetheless, should the State Water Resources  
5 Control Board decide to issue a remedy, it should  
6 provide a commitment by the State Water Resources  
7 Control Board to promote water policies that will allow  
8 alternative water supply projects to move forward.

9           The remedies should provide a commitment by  
10 the State Water Resources Control Board to work more  
11 closely with the community to facilitate and possibly  
12 expedite a long-term water supply solution.

13           Thank you.

14           I'll now present our case-in-chief for the  
15 second phase, have Mr. Schubert testify.

16                           F. MARK SCHUBERT

17           Called by CALIFORNIA AMERICAN WATER COMPANY

18                           DIRECT EXAMINATION BY MR. RUBIN

19           MR. RUBIN: Good morning, Mr. Schubert.

20           MR. SCHUBERT: Good morning.

21           MR. RUBIN: Mr. Schubert, will you please  
22 state and spell your name for the record.

23           MR. SCHUBERT: My name is F. Mark Schubert,  
24 M-a-r-k. Schubert, S-c-h-u-b-e-r-t.

25           MR. RUBIN: Mr. Schubert, have you taken the

1 oath for this hearing?

2 MR. SCHUBERT: Yes, I have.

3 MR. RUBIN: A true and correct -- excuse me.

4 A true and correct statement of your experience and  
5 professional qualifications was marked as Exhibit  
6 CAW-032A and admitted into evidence during the first  
7 phase of this proceeding?

8 MR. SCHUBERT: Yes, it was.

9 MR. RUBIN: Hearing Officers, I distributed  
10 yesterday revised testimony which has been marked as  
11 Exhibit CAW-37A. Is that the testimony that we will be  
12 using today? I don't know if there was an objection, I  
13 believe, raised yesterday.

14 CO-HEARING OFFICER BAGGETT: Well, I think --

15 MR. JACKSON: For the record, I would object  
16 to the use of a document that contains material that  
17 has been either redacted or eliminated on the grounds  
18 of national security. There is no way to check whether  
19 that's true, and an altered document is not the best  
20 evidence.

21 MR. RUBIN: There's a number of different  
22 responses I could provide.

23 CO-HEARING OFFICER WOLFF: Before you do, let  
24 me just be sure I understand that objection.

25 Would you object that the alternate exhibit

1 that Mr. Rubin prepared, which is a clean resubmittal  
2 of testimony without any -- there would be redactions,  
3 but it would not be labeled as such. It would be a  
4 replacement exhibit for the previously-submitted one.  
5 Do you object to that as well?

6 MR. JACKSON: As long as no part of that  
7 document goes into evidence in any fashion.

8 His testimony can refer to the document, but  
9 to put a document into the record that has been altered  
10 without having the ability to actually brief whether or  
11 not that document is still the best evidence that would  
12 be possible, I don't believe that any part of that  
13 document should go into evidence. His testimony can  
14 refer to his role in the document, but not to what it  
15 says.

16 CO-HEARING OFFICER BAGGETT: Reading what was  
17 provided, all it says is firm production capacity  
18 deficit of 3.8 million gallons per day to meet, et  
19 cetera. And if the witness can testify under his  
20 knowledge that that's accurate, then that's --

21 MR. JACKSON: He can. I just want to make  
22 sure that the document itself, or no part of it, is  
23 admitted into evidence.

24 MR. RUBIN: And just for the record, which  
25 document? Are you talking about the written testimony

1 or the document that was the subject or caused the  
2 redaction?

3 MR. JACKSON: The document that caused the  
4 redaction.

5 MR. RUBIN: This is -- maybe we -- I can  
6 address your concerns by saying: The reason we  
7 redacted the reference to the document is because we  
8 cannot disclose it.

9 MR. JACKSON: Right.

10 MR. RUBIN: And so rather than have a record  
11 where there's a reference to a document that we cannot  
12 disclose, we've redacted testimony that references it.

13 MR. JACKSON: Which is fine.

14 CO-HEARING OFFICER BAGGETT: Okay.

15 MR. JACKSON: I just want to make sure what it  
16 was.

17 CO-HEARING OFFICER BAGGETT: Got it. So there  
18 is no objection.

19 MR. RUBIN: So for the purposes of this  
20 testimony, I'll be referring to Exhibit CAW-37A, which  
21 we marked yesterday and distributed to the parties.

22 Mr. Schubert, is Exhibit CAW-37A your written  
23 testimony prepared for the second phase of this  
24 proceeding?

25 MR. SCHUBERT: Yes, it is.

1           MR. RUBIN: Mr. Schubert, do you have any  
2 corrections to Exhibit CAW-37A?

3           MR. SCHUBERT: I have one additional  
4 correction. If you go to page 4, beginning on line 15,  
5 after the semicolon where it says "in place by Order  
6 95-10" semicolon, insert the words "the Seaside Basin  
7 adjudication" semicolon "and" and then continue on with  
8 the rest of the sentence.

9           And then go to line 16, and at the end of the  
10 parenthetical, after "steelhead trout," delete the  
11 semicolon, replace it with a comma, delete the word  
12 "and" and insert the word "including."

13           That's all the changes I have.

14           MR. RUBIN: Thank you.

15           To the best of your knowledge, is the  
16 information presented in Exhibit CAW-37A true and  
17 correct?

18           MR. SCHUBERT: Yes.

19           MR. RUBIN: Can you briefly summarize the  
20 purpose of your written testimony, Exhibit CAW-37A?

21           MR. SCHUBERT: Well, the purpose of my  
22 testimony is to touch on the infrastructure impacts  
23 that the proposed reduction in the cease and desist  
24 order would have on the distribution system.

25           MR. RUBIN: Is another purpose of your written

1 testimony to describe the ability of California  
2 American Water to meet the water demands on the  
3 Peninsula if the reductions in the draft cease and  
4 desist order are adopted by the State Water Resources  
5 Control Board?

6 MR. SCHUBERT: Yes.

7 MR. RUBIN: Mr. Schubert, in your written  
8 testimony, Exhibit CAW-37A, you use the term firm  
9 production capacity; is that correct?

10 MR. SCHUBERT: Yes, that's correct.

11 MR. RUBIN: I believe you use that term on  
12 page 4 of your written testimony, CAW-37A?

13 MR. SCHUBERT: I know I used it on page 5.

14 MR. RUBIN: Okay. Can you explain what is  
15 firm production capacity?

16 MR. SCHUBERT: Sure. Firm production capacity  
17 is the evaluation -- a water system's source of supply  
18 in order to meet customers' demand during a maximum day  
19 condition.

20 MR. RUBIN: Is firm production capacity also  
21 referred to as reliable pumping capacity?

22 MR. SCHUBERT: Yes. Another way look at it is  
23 if you take all your supplies and you take out the  
24 largest pumping unit, out of service, to come up with  
25 that figure.

1           MR. RUBIN: Is firm production capacity also  
2 sometimes discussed as firm pumping capacity?

3           MR. SCHUBERT: Yes.

4           MR. RUBIN: I have no further questions of  
5 this witness. Make him available for  
6 cross-examination.

7           CO-HEARING OFFICER BAGGETT: Very good, thank  
8 you.

9           With that, any of the cities have any  
10 cross-examination? Seaside Basin? No? Water  
11 Management District?

12          MR. LAREDO: No cross-examination.

13          CO-HEARING OFFICER BAGGETT: Public Trust  
14 Alliance?

15          MS. NELSON: No.

16          CO-HEARING OFFICER BAGGETT: No  
17 cross-examination. Well, Mr. Jackson, you're up.

18                   CROSS-EXAMINATION BY MR. JACKSON

19                   FOR CARMEL RIVER STEELHEAD ASSOCIATION

20          MR. JACKSON: Mr. Schubert, my name is Mike  
21 Jackson, and I represent the California Sports Fishing  
22 Protection Alliance.

23                   Your testimony basically says that you have  
24 less water than you need; is that correct?

25          MR. SCHUBERT: In short, yes.

1           MR. JACKSON: And that there are certain water  
2 requirements of your system to keep it functioning  
3 correctly?

4           MR. SCHUBERT: Yes.

5           MR. JACKSON: Are those needs independent of  
6 the source of the water?

7           MR. SCHUBERT: I'm not sure I understand your  
8 question.

9           MR. JACKSON: If in fact there was an  
10 alternate water source, you wouldn't need the Carmel  
11 River, in terms of your engineering, to run either the  
12 BIRP or the rest of your distribution system, correct?

13          MR. SCHUBERT: Yes, that's correct.

14          MR. JACKSON: Have you had any occasion to  
15 look for an alternative water source since 1995,  
16 yourself personally?

17          MR. SCHUBERT: Myself personally, I'm  
18 indirectly involved with the efforts moving forward  
19 with Plan B and ultimately the Coastal Water Project.

20          MR. JACKSON: In that regard, have you made  
21 any contact with farmers in the Salinas Valley about  
22 bringing in water?

23          MR. RUBIN: I'm going to object to the line of  
24 questioning. I know yesterday we had quite a bit of  
25 discussion about alternative supplies. I didn't raise

1 the objection at that point because they were based  
2 upon written testimony that the Monterey Peninsula  
3 Water Management District provided for this phase, and  
4 there were no objections raised to the testimony.

5 In this case, California American Water has  
6 presented testimony during Phase 1 on all of the  
7 different activities that it has pursued in its  
8 diligent pursuit of alternative supplies, and  
9 Mr. Jackson's questions at this point directed to this  
10 witness -- particularly who was at the first phase --  
11 is out -- should be considered outside the scope of  
12 this second phase.

13 MR. MINTON: Jonas Minton for Planning and  
14 Conservation League.

15 I note in Mr. Schubert's testimony in this  
16 phase on page 2, lines 1 through 5, he comes to his  
17 conclusion that California American Water service  
18 cannot meet their water demands under this order.

19 And it appears to me that it is relevant,  
20 extremely, to understand the basis for his conclusion  
21 that they cannot meet that; and what alternatives they  
22 have looked at seems relevant to the basis for this  
23 testimony. Thank you.

24 MR. RUBIN: And that's -- that is --  
25 discussion of Mr. Schubert's testimony is a reflection

1 of the position that the California American Water  
2 Company presented during Phase 1. All of the testimony  
3 during Phase 1 dealt with diligence, the available  
4 alternative supplies that were being pursued, and so  
5 this is just a summary statement to lead into the issue  
6 of remedy.

7 MR. JACKSON: Mr. Baggett, may I be heard?

8 First of all, if it's just a summary  
9 statement, it should be stricken. But I don't think  
10 that's what it is. And the purpose of this line of  
11 questioning is to determine what the engineering  
12 problems would be in delivering water to the BIRP to  
13 avoid the --

14 CO-HEARING OFFICER BAGGETT: I understand. I  
15 would overrule, but I would just ask counsel that you  
16 can, I guess, minimize the discussion since so much of  
17 this is already clearly in the record. I mean, we've  
18 got it from Phase 1, I think counsel is correct, for  
19 Cal Am.

20 But -- I'll allow the line of questioning, but  
21 if you could recognize that much of this is already in  
22 the record and was discussed in Phase 1, and if you  
23 could just --

24 MR. JACKSON: Your memory, Mr. Baggett, of  
25 what's in the record may be better than mine. But I

1 just sat through an opening statement that was pretty  
2 much about the Public Trust. And I've been trying to  
3 get evidence about the Public Trust into this record  
4 regularly in this hearing, and that was more than I  
5 have heard so far.

6 CO-HEARING OFFICER BAGGETT: That was not  
7 evidence. That was an opening statement.

8 MR. JACKSON: I understand, but --

9 CO-HEARING OFFICER BAGGETT: And you can argue  
10 that as part of your closing statement.

11 MR. JACKSON: -- clearly the evidence was that  
12 there was no evidence in the record on our side.

13 MR. RUBIN: Hearing Officer Baggett, the  
14 witness is prepared to respond to questions Mr. Jackson  
15 asks.

16 CO-HEARING OFFICER BAGGETT: Please continue.

17 MR. JACKSON: Mr. Schubert, if water were  
18 delivered to the BIRP in sufficient quantity to deal  
19 with the impacts that you describe on the operation of  
20 the distribution system, and sufficient to meet your  
21 demand, it would not matter technically where the  
22 source came from?

23 MR. RUBIN: I'm going to object to that  
24 question; it calls for speculation. If it's being  
25 delivered, when is it going to be delivered, how

1 frequently --

2 CO-HEARING OFFICER BAGGETT: Sustained. Can  
3 you be more specific?

4 MR. JACKSON: Assuming the water is delivered  
5 from the Salinas drainage to the BIRP, is there any  
6 technical reason why Salinas River water would not  
7 solve the two problems that you identify at lines  
8 6 through 7 of your testimony?

9 MR. SCHUBERT: I don't know. I haven't  
10 examined any of that alternative, so I don't know.

11 MR. JACKSON: Is there anything about the raw  
12 water delivered to your system that requires it to be  
13 from the Carmel River?

14 MR. SCHUBERT: That's where the current  
15 sources of supply are.

16 MR. JACKSON: Is there anything about the  
17 nature of that supply that makes it uniquely necessary  
18 in your system?

19 MR. SCHUBERT: No.

20 MR. JACKSON: Do you know how far it is from  
21 the Salinas River to the BIRP?

22 MR. SCHUBERT: I do not know.

23 MR. JACKSON: How long have you lived in the  
24 area, sir?

25 MR. SCHUBERT: I don't live in Monterey.

1 MR. JACKSON: All right.

2 Now, you discuss on page 2 of your testimony  
3 seven wells that you describe as in service and  
4 available for supply purposes: Berwick No. 8, Begonia  
5 No. 2, Manor No. 2, Schulte No. 2, Pearce No. 1,  
6 Cypress No. 1, and Rancho Canada No. 1.

7 Are all of those wells presently able to pump  
8 water from the underground to the surface?

9 MR. SCHUBERT: All of those in operation, yes.

10 MR. JACKSON: Do you have other wells that are  
11 not in operation in the Carmel Valley?

12 MR. SCHUBERT: There are a number of wells  
13 that I indicate in my testimony on the same page that  
14 are in the upper Carmel Valley that we don't run at all  
15 unless the flows in the river at the Don Juan gage are  
16 above 20 CFS for a period of five consecutive days.

17 MR. JACKSON: Which of your wells in the lower  
18 Carmel Valley is the closest physically to the Carmel  
19 River Lagoon?

20 MR. RUBIN: Just to assist, I think there is  
21 an exhibit that's part of the evidence that might help  
22 Mr. Jackson locate wells. It's a figure from Order  
23 95-10. I don't know if it would be helpful to put that  
24 up on the screen at this point. I think it's figure 3.

25 MR. JACKSON: Actually, I'd kind of like to do

1 it my own way, if that's possible. I think it's a  
2 relevant question: Which is the well closest to the  
3 lagoon? And this man should know.

4 CO-HEARING OFFICER BAGGETT: I agree it's  
5 relevant, but if there is a -- well, continue. If  
6 there is a map --

7 MR. JACKSON: The Rancho Canada well.

8 And to the best of your knowledge, how close  
9 is the Rancho Canada well to the lagoon?

10 MR. SCHUBERT: I believe it's within about  
11 three miles.

12 MR. JACKSON: All right. Is the Rancho Canada  
13 well capable of putting water in the Carmel River?

14 MR. SCHUBERT: Could you repeat the question?

15 MR. JACKSON: Is the Rancho Canada well  
16 capable of moving water from underground to the surface  
17 and depositing it in the Carmel River?

18 MR. SCHUBERT: No.

19 MR. JACKSON: What would have to be built to  
20 enable it to do that?

21 MR. SCHUBERT: Some piping would have to be --  
22 some reconfiguration of the existing piping would have  
23 to occur.

24 MR. JACKSON: Is it -- as an engineer, as --  
25 in your professional opinion as an engineer, is it

1 possible to reconfigure the piping to accomplish that  
2 goal?

3 MR. SCHUBERT: Yes.

4 MR. JACKSON: Thank you. I have no further  
5 questions.

6 CO-HEARING OFFICER BAGGETT: Thank you.  
7 Mr. Silver?

8 MR. SILVER: Sierra Club has no questions.

9 CO-HEARING OFFICER BAGGETT: Planning and  
10 Conservation League?

11 CROSS-EXAMINATION BY MR. MINTON

12 FOR PLANNING AND CONSERVATION LEAGUE

13 MR. MINTON: Good morning. I'm Jonas Minton  
14 representing the Planning and Conservation League.

15 Mr. Schubert, today I will have inquiries in  
16 three areas. First, are you the only witness employed  
17 by California American Water testifying in Phase 2 of  
18 this hearing?

19 MR. SCHUBERT: Yes.

20 MR. RUBIN: Just to clarify, the witness is  
21 here on behalf of the company. There is going to be a  
22 rebuttal case, and there will be witnesses as part of  
23 this Phase 2 presenting testimony on behalf of  
24 California American Water.

25 MR. MINTON: Thank you.

1           Mr. Schubert, are you aware that California  
2 American Water Company signed a Memorandum Of  
3 Understanding for urban water conservation Best  
4 Management Practices in 1991?

5           MR. SCHUBERT: Yes.

6           MR. MINTON: Are you aware that Section 6.2 of  
7 that MOU provides that, quote:

8           The signatory water suppliers will  
9           submit standardized reports every other  
10          year to the Council providing sufficient  
11          information to inform the Council on the  
12          progress being made towards implementing  
13          the BMP process.

14          MR. SCHUBERT: I'm not familiar with that  
15 section.

16          MR. MINTON: Okay. Mr. Schubert, for you, and  
17 extra copies for others, I have a copy of the  
18 California Urban Water Conservation Council's Best  
19 Management Practices findings report for the California  
20 American Water service Monterey service area. I'll  
21 share that with you.

22          CO-HEARING OFFICER BAGGETT: What exhibit do  
23 you have, Planning and Conservation League? We should  
24 identify this as an exhibit and make sure that it gets  
25 entered.

1 MR. MINTON: For identification purposes, I  
2 request it be identified as PCL-4.

3 CO-HEARING OFFICER BAGGETT: PCL-4.  
4 (Exhibit PCL-4 was marked for  
5 identification.)

6 MR. MINTON: I gave all my copies away, so I'm  
7 going to ask if I might get one back.

8 MR. RUBIN: Has this been marked?

9 MR. MINTON: I've requested it be marked as  
10 PCL Exhibit 4.

11 MR. RUBIN: Thank you.

12 MR. MINTON: Mr. Schubert, can you see by  
13 looking at the columns at the bottom of pages 1 and  
14 continuing on, that the California Urban Water  
15 Conservation Council reports no progress reports for  
16 years 2008, -7, -6, and -5?

17 MR. RUBIN: I'm going to object to the  
18 question. There's no foundation laid as to what this  
19 document is, if Mr. Schubert is familiar with it.

20 CO-HEARING OFFICER BAGGETT: Sustained. Can  
21 you --

22 MR. MINTON: Mr. Schubert, as I understand it  
23 from your testimony, one of your responsibilities is  
24 liaison for the compliance with various state and other  
25 regulations?

1 MR. SCHUBERT: Yes.

2 MR. MINTON: Does that cause you to be aware  
3 of commitments that California American Water Company  
4 has entered into for things like the Memorandum of  
5 Understanding for Urban Water Conservation Best  
6 Management Practices?

7 MR. SCHUBERT: In some instances, yes.

8 MR. MINTON: So do you have any personal  
9 knowledge as to whether California American Water  
10 service company has submitted progress reports as  
11 committed to under that Memorandum Of Understanding?

12 MR. SCHUBERT: I don't have any knowledge.

13 MR. MINTON: Okay, thank you.

14 Mr. Schubert, are you aware that the Urban  
15 Water Management Planning Act requires urban water  
16 suppliers delivering 3,000 acre feet or having 3,000  
17 customers to submit urban water conservation plans in  
18 years starting or ending in 0 or 5?

19 MR. RUBIN: I'm going to object to the line of  
20 questions. I fail to see the relevance of the  
21 questions.

22 MR. MINTON: As I -- if I may, as I look at  
23 Mr. Schubert's direct testimony submitted for this  
24 phase, it indicates on page 2 that the remedy proposed  
25 by the Prosecution Team would result in California

1 American having insufficient supplies to meet the  
2 demands of its customers.

3           It appears to me entirely relevant to the  
4 State Water Resources Control Board to ascertain as  
5 well as this witness can provide whether they have  
6 fully explored alternatives including that novel idea  
7 of water conservation that would allow them to meet the  
8 demands of its customers.

9           MR. RUBIN: And there is no objection if  
10 Mr. Minton is asking questions about the conservation  
11 activities of the company, but that's not his question.  
12 His question is whether they complied with a separate  
13 law that's not at issue in this proceeding.

14           And frankly, whether the company has or has  
15 not is not relevant. That's a procedural issue in  
16 terms of compliance with the law.

17           Whether they are compliant with the law or not  
18 is not relevant to the question of whether they're  
19 meeting the requirements of the law, the substantive  
20 requirements of the law or, more importantly, getting  
21 to Mr. Minton's questions, the level of conservation  
22 that may or may not be occurring within the Monterey  
23 Peninsula.

24           MR. JACKSON: Mr. Baggett, may I be heard on  
25 this?

1 MR. MINTON: If I may first, Michael.

2 Just, it seems to me that one of the purposes  
3 of cross-examination is to allow other parties to  
4 examine the credibility of the testimony being  
5 provided. And this conclusion I think is relevant as  
6 to whether they have available information that could  
7 be reviewed to determine their level of participation.  
8 They have not yet answered that.

9 CO-HEARING OFFICER BAGGETT: Mr. Jackson?

10 MR. JACKSON: You are going to allow the  
11 question?

12 CO-HEARING OFFICER BAGGETT: I'm going to  
13 allow the question. Overruled. But to the extent that  
14 it's relevant, what would be in those boxes is  
15 relevant. Whether the boxes were filled out is  
16 relevant. But to go to the question which I think you  
17 are trying to focus on is: What are the answers to  
18 these missing boxes.

19 MR. JACKSON: Mr. Baggett, in that regard, I  
20 would like to be heard.

21 It's my understanding from the Code of  
22 California Regulations that relevance starts out being  
23 defined the way it is in court which is evidence that  
24 is -- you're allowed to question on evidence that is  
25 relevant or could lead to --

1 CO-HEARING OFFICER BAGGETT: I understand.

2 MR. JACKSON: -- relevant evidence. And the  
3 Code of -- California Code of Regulations for these  
4 hearings allows cross-examination on issues that are  
5 beyond the scope of the direct. Otherwise, people  
6 would come in and fashion direct in order to avoid --

7 CO-HEARING OFFICER BAGGETT: I would concur.  
8 I'm allowing him to continue. I have overruled. I'm  
9 just requesting that we get to -- the real issue is  
10 what is in those boxes. I think that's where you're  
11 going, what should be in those boxes. So proceed.

12 MR. MINTON: Mr. Schubert, let me repeat the  
13 question as I recall it: Are you aware that the Urban  
14 Water Management Planning Act requires urban water  
15 suppliers delivering 3,000 acre feet of water annually  
16 or serving 3,000 customers to prepare and submit to the  
17 Department of Water Resources Urban Water Management  
18 Plans in years ending in 0 or 5?

19 MR. SCHUBERT: Yes.

20 MR. MINTON: If I may show you and ask to be  
21 marked as PCL Exhibit 5 for identification purposes.

22 (Exhibit PCL-5 was marked for  
23 identification.)

24 CO-HEARING OFFICER BAGGETT: Proceed.

25 MR. MINTON: Mr. Schubert, does Exhibit 5

1 purport to be a letter from David Todd, Technical  
2 Assistance and Outreach Branch Manager, California  
3 Department of Water Resources, to Mr. Steven Leonard,  
4 identified in this letter as Vice President, Cal  
5 American Water service company, in a letter dated  
6 January 22nd, 2007?

7 MR. SCHUBERT: Yes.

8 MR. MINTON: Would you be so kind as to read  
9 the next to the last sentence in the first paragraph?

10 MR. RUBIN: I'm going to object to the letter  
11 at this point. If Mr. Minton wants to establish a  
12 foundation for the document; otherwise, we're going  
13 through the process that objections were sustained  
14 earlier in this proceeding about reading a document.

15 The document speaks for itself. If Mr. Minton  
16 is going to try to bring this into evidence, he needs  
17 to lay a proper foundation, make sure that the witness  
18 is familiar with the document and can testify to it.  
19 So if we're going down this path, he needs to lay that  
20 foundation before we go into questioning.

21 CO-HEARING OFFICER BAGGETT: Okay.

22 MR. MINTON: Mr. Schubert, based on your  
23 written testimony from Phase 2, do you in fact have  
24 responsibility to ensure compliance with all state and  
25 federal regulations?

1 MR. SCHUBERT: Yes.

2 MR. MINTON: As such, are you aware of the  
3 requirements for California American Water service  
4 company to prepare an Urban Water Management Plan?

5 MR. SCHUBERT: In general, yes.

6 MR. MINTON: Would you be aware if California  
7 American Water service company -- oh, if you would  
8 strike that, please.

9 Mr. Schubert, are you also responsible for  
10 providing expert consultation on behalf of California  
11 American Water service company in matters before the  
12 Public Utilities Commission?

13 MR. SCHUBERT: Would you repeat the question,  
14 please?

15 MR. MINTON: Do you also provide professional  
16 consultation on behalf of the -- well, let me read  
17 exactly:

18 Rate case support and testimony as an  
19 expert witness on capital project  
20 planning in California.

21 MR. SCHUBERT: Yes.

22 MR. MINTON: Does that include rate case  
23 assistance before the California Public Utilities  
24 Commission?

25 MR. SCHUBERT: Yes. Specifically, I provide

1 support on capital projects.

2 MR. MINTON: Mm-hmm. Does the Urban Water  
3 Management Plan include capital projects such as main  
4 replacement, leak detection?

5 MR. SCHUBERT: I don't know. I don't think  
6 so.

7 MR. MINTON: In your role as liaison for  
8 state, federal, and local regulatory agencies to ensure  
9 compliance with all state and federal regulations, what  
10 is your responsibility within the company to be aware  
11 of its compliance with the Urban Water Management  
12 Planning Act?

13 MR. SCHUBERT: That would be one of my  
14 responsibilities, is to be aware, yes.

15 MR. MINTON: So have you previously seen this  
16 letter or become aware of the contents of this letter,  
17 the substance of this letter?

18 MR. SCHUBERT: This is the first time I've  
19 seen the letter.

20 MR. MINTON: Mm-hmm, okay. Have you been made  
21 aware of the substance of the letter? That is  
22 specifically that the California Department of Water  
23 Resources cannot consider the plan complete at this  
24 time?

25 MR. RUBIN: I'm going to object to the

1 question. Whether the Department of Water Resources  
2 made that finding or not is not a fact.

3 MR. MINTON: I'm sorry? It's not a fact?

4 MR. RUBIN: It's not a fact. You're  
5 misstating the document or the information that's  
6 before the State Water Resources Control Board.

7 MR. MINTON: Let me read --

8 MR. RUBIN: I --

9 MR. MINTON: -- specifically --

10 MR. RUBIN: Rather than argue it, I understand  
11 what the letter says.

12 Mr. Minton wants to characterize it as a  
13 statement in the letter. But because we haven't been  
14 able to establish a foundation -- we don't know if the  
15 letter was sent; we don't know if it was received; we  
16 don't know if it was amended; we don't know if there  
17 was a response that clarified.

18 We have none of that information; and so,  
19 although the letter writer states something, we don't  
20 know if it's true, if it's not true, or if the opinions  
21 have changed.

22 And that's the issue about why a foundation  
23 needs to be laid.

24 CO-HEARING OFFICER BAGGETT: I understand.

25 The witness has answered that he hasn't seen the

1 letter.

2 MR. JACKSON: I guess if every single document  
3 in the State files required the foundation that was  
4 just described, the State couldn't work.

5 You are allowed to take notice of letters in  
6 files of State agencies. This is a letter in the file  
7 of a State agency; and as such, you can take judicial  
8 notice of this letter.

9 CO-HEARING OFFICER BAGGETT: Mr. Rubin?

10 MR. RUBIN: That may or may not be the case.  
11 That's not what's being presented today.

12 What's being presented today is an attempt to  
13 elicit testimony. And in order to do that, we need to  
14 follow some rules; and my objection is trying to have  
15 this party adhere to the rules.

16 MR. MINTON: Is it my understanding that under  
17 the quasi-judicial process involved in these hearings  
18 that you have the opportunity to give whatever weight  
19 you think is appropriate for materials submitted?

20 CO-HEARING OFFICER BAGGETT: The letter could  
21 be accepted as a State agency letter, as Mr. Jackson  
22 stated.

23 The witness has answered that he is not  
24 familiar with the letter. He hasn't seen the letter.  
25 We don't know whether the letter even made it to Cal

1 Am. That foundation has not been laid. There's no --  
2 we know it was sent. Or it appears to have been sent.

3 MR. RUBIN: We know that it's been signed. We  
4 don't know if it's been sent.

5 CO-HEARING OFFICER BAGGETT: So I guess I  
6 would ask if you could get to the point you're trying  
7 to make here. The witness has already answered he's  
8 not seen the letter, he's not familiar with the letter.  
9 So you've made your point.

10 MR. MINTON: Yes. Thank you.

11 CO-HEARING OFFICER BAGGETT: So could you move  
12 on?

13 MR. MINTON: I'm ready to.

14 CO-HEARING OFFICER BAGGETT: Okay. Please.

15 MR. MINTON: To Mr. Rubin's question, we don't  
16 know if there has been any response to it and whatnot,  
17 let me show you and ask to be marked for identification  
18 purposes as PCL 6 the following.

19 (Exhibit PCL-6 was marked for  
20 identification.)

21 MR. MINTON: Mr. Schubert, does --

22 MR. RUBIN: Before you ask questions, has this  
23 been marked?

24 MR. MINTON: I asked it be marked PCL-6.

25 MR. RUBIN: Thank you.

1           MR. MINTON: Mr. Schubert, does item  
2 identified as PCL-6 purport to be an e-mail sent from  
3 Chriss Fakunding to Jonas Minton on July 28, 2008?

4           MR. SCHUBERT: I'm not familiar with this  
5 document.

6           MR. MINTON: Okay. So you do not know if  
7 California American Water service company responded to  
8 the letter sent, that I posit was sent on January 22nd,  
9 2007?

10          MR. SCHUBERT: No.

11          MR. MINTON: Okay, thank you. Mr. Schubert,  
12 once again, your testimony is that you provide rate  
13 case support?

14          MR. SCHUBERT: Yes.

15          MR. MINTON: And that includes rate case  
16 support before the California Public Utilities  
17 Commission?

18          MR. SCHUBERT: Yes, that's correct.

19          MR. MINTON: Allow me to show you the  
20 following. If you would take a few moments to review  
21 this.

22                   (Participants reviewing document)

23          CO-HEARING OFFICER BAGGETT: Are we ready?  
24 Continue.

25          MR. MINTON: And for purposes of foundation,

1 let me also provide you and the Board Members and other  
2 parties what I purport to be electronic service from  
3 Cinthia Velez from the firm of Manatt, Phelps which I  
4 received to accompany the document I just provided.

5 And if I might ask the document I just  
6 provided be marked for identification purposes as PCL-7  
7 and what I purport to be this electronic service be  
8 marked as PCL-8.

9 (Exhibits PCL-7, PCL-8 were marked for  
10 identification.)

11 MR. MINTON: Mr. Schubert, the documents I  
12 have asked you to look at --

13 MR. LAREDO: We've not yet received the copy  
14 of this last PCL-8.

15 MR. MINTON: I'm sorry.

16 MR. LAREDO: Thank you. Mr. Baggett, we now  
17 have that.

18 CO-HEARING OFFICER BAGGETT: Continue.

19 MR. MINTON: Mr. Schubert, are you familiar  
20 with the rate case referenced in the item marked for  
21 identification purposes as PCL-7 entitled California  
22 American Water Company, U21OW, an interest rate of 8.33  
23 for Allowance for Funds Used During Construction  
24 (AFUDC) for San Clemente Dam Memorandum account?

25 MR. SCHUBERT: I have the document in front of

1 me.

2 MR. MINTON: Are you familiar with that rate  
3 case or that proceeding?

4 MR. SCHUBERT: Not specifically, no.

5 MR. MINTON: Okay. Could I draw your  
6 attention to numbered page 2.

7 MR. SCHUBERT: Yes.

8 MR. MINTON: Could I ask you to read the  
9 paragraph starting about midway down: As the alternate  
10 decision correctly notes --

11 MR. RUBIN: I'm going to object to the  
12 question on the same grounds I objected to earlier.  
13 Before we try to bring in testimony, Mr. Minton has to  
14 establish a foundation on this document; and I don't  
15 believe he has done that.

16 MR. MINTON: Once again, this is a document  
17 filed, I purport, by representatives of California  
18 American Water service before a State agency, and I  
19 received notice of it. I believe some other parties,  
20 as I notice the service list, to this proceeding also  
21 received parties. So it seems to me relevant for the  
22 hearing to look at that and give whatever weight they  
23 view appropriate.

24 MR. RUBIN: I understand that. The document  
25 speaks for itself. If Mr. Minton is asking questions

1 to lay a foundation for additional questions  
2 specifically on statements in the document, trying to  
3 elicit official information besides that that's  
4 presented in the document itself, he needs to lay the  
5 foundation.

6 If not, then we have the document marked, and  
7 he can move for admission into evidence at the  
8 appropriate time for what the document says.

9 MR. MINTON: I am trying to get to a question  
10 of understanding what Cal Am means by their submission  
11 to a fellow State agency -- or one of your sister State  
12 agencies and, in particular, what they mean by some of  
13 the wording in the second paragraph. I want to  
14 understand if this witness can help this hearing  
15 understand --

16 CO-HEARING OFFICER BAGGETT: I understand. So  
17 continue. The witness does not have to read orally the  
18 paragraph. It speaks for itself. But you can ask  
19 questions about that paragraph.

20 MR. MINTON: Thank you.

21 Mr. Schubert, could you please interpret for  
22 us what the company -- pardon me -- strike that.

23 Could you please explain to us as a  
24 representative of California American what California  
25 American meant when it differentiated between the

1 requirements for remediating the seismic risk at  
2 San Clemente Dam, which was emphasized by underscoring  
3 the word "must," versus their consideration of the  
4 Coastal Water Project, wherein this submission  
5 indicates they may ultimately choose not to pursue that  
6 project? What is the difference in their thinking?

7 MR. RUBIN: I'm going to object to the  
8 question. Again, the foundation hasn't been laid. I  
9 assume -- I would withdraw my objection if what  
10 Mr. Minton is asking is to the extent this witness  
11 knows what the position of the company is because,  
12 again, we don't know if this witness is familiar with  
13 this document, was involved in its preparation, and  
14 therefore understands the position of the company as  
15 expressed for this proceeding and this document.

16 CO-HEARING OFFICER BAGGETT: So could the  
17 witness answer the question to the extent of your  
18 knowledge.

19 MR. SCHUBERT: To the extent of my knowledge,  
20 I'm not familiar with how this was put together because  
21 I wasn't involved.

22 MR. MINTON: To the extent of your knowledge,  
23 are you aware of California American Water Company's  
24 position on the mandatory nature of seismic retrofit  
25 versus compliance with Water Board Order 95-10?

1 CO-HEARING OFFICER BAGGETT: Could the witness  
2 answer?

3 MR. SCHUBERT: Would you repeat the question,  
4 please?

5 MR. MINTON: Yes.

6 Based on your knowledge, what is the  
7 California American Water service company's views that  
8 differentiate what they have characterized as a must  
9 remediation for San Clemente Dam seismic deficiencies  
10 versus -- or how does that compare with their views on  
11 complying with the water diversion limits within Water  
12 Board Order 95-10?

13 MR. SCHUBERT: I'm not sure I can answer that  
14 question. I think you're trying to compare apples and  
15 oranges. And in my view, I've been somewhat involved  
16 with San Clemente Dam, for example. I mean there, the  
17 Division of Safety of Dams issued basically an order  
18 that you have a seismic problem here, and you've got to  
19 fix it. We went through the whole EIR process and a  
20 preferred option has been selected.

21 The company's working actually rather closely  
22 with the Coastal Conservancy, as you well know, on an  
23 alternate that was developed as part of the EIR. So  
24 I -- I'm having trouble with your question.

25 MR. MINTON: What I'm trying to understand,

1 based on your knowledge, you just characterized the  
2 company's efforts with respect to remediation of the  
3 seismic safety issue at San Clemente Dam as something  
4 you're doing pursuant to an order, yet this filing  
5 attempts to differentiate between the San Clemente Dam  
6 Project and the Coastal Water Project.

7 And I'm trying to understand if the company  
8 views compliance with Water Board Order 95-10 as less  
9 significant than compliance with a dam safety  
10 deficiencies directive, to the best of your knowledge.

11 MR. RUBIN: I'm going to object to the  
12 question as well on the grounds that this is a legal  
13 brief that was submitted. It's not a declaration that  
14 a technical person submitted. And to the extent there  
15 is a legal basis for the statement, it's outside the  
16 scope of Mr. Schubert's expertise and his ability to  
17 testify as a layperson.

18 CO-HEARING OFFICER BAGGETT: I think that -- I  
19 don't think we have to rule on that. The witness has  
20 already answered the question, I thought, that he  
21 doesn't have knowledge. But you're welcome to try  
22 another route.

23 MR. MINTON: Thank you.

24 In my last area of inquiry, Mr. Schubert, if I  
25 might direct your attention to your written testimony

1 for Phase 2, page 2 -- let me find that here. Starting  
2 at line 1 and going through most of line 4, just ask  
3 you to take a look at that.

4 MR. SCHUBERT: Yes, I have it.

5 MR. MINTON: As I read this, it appears -- I  
6 want to see if I'm reading this per your intent. This  
7 indicates that California American Water service cannot  
8 implement projects sufficient to offset the impacts  
9 caused by the reductions under the cease and desist  
10 order.

11 That's your testimony. That does not have any  
12 time frame in this written testimony; is that correct?

13 MR. SCHUBERT: That's correct.

14 MR. MINTON: Is it your testimony that  
15 California American Water service could never implement  
16 water supply projects sufficient to offset the impacts  
17 that would be caused by the reductions proposed under  
18 the remedy in the draft cease and desist order?

19 MR. SCHUBERT: No. Not at all.

20 MR. MINTON: My last question: If the State  
21 Water Resources Control Board does not adopt the cease  
22 and desist order substantially as proposed by the  
23 Prosecution Team, can you provide any time certain by  
24 which California American can commit to reducing its  
25 diversions consistent with Water Board Order 95-10?

1           MR. SCHUBERT: Well, I can pretty much go  
2 through the current progress that we're making with the  
3 Coastal Water Project. There is an EIR that is under  
4 review by the California Public Utilities Commission.  
5 The draft is planned to be issued by the end of 2008.  
6 And from there, our expectation is that a final EIR  
7 would be issued by the end of 2009.

8           And then after that, the Commission goes  
9 through the process of reviewing the Certificate of  
10 Public Convenience and Necessity.

11           From there, our expectation is that would  
12 happen by the end of 2010.

13           Continuing on with -- going on parallel with  
14 that whole effort, there's permitting activities; and  
15 the very last permit that we have to get before  
16 construction can begin is a coastal development permit  
17 from the California Coastal Commission. And our  
18 expectation that we plan is that would happen by the  
19 end of 2011.

20           Construction would start immediately  
21 thereafter. And the current plan of the project being  
22 substantially complete would be the latter part of 2014  
23 with service of the facilities in place by the first  
24 part of 2015.

25           MR. MINTON: Thank you for that background

1 information.

2 Let me focus on the part of the question I was  
3 particularly interested in, which is: If the Water  
4 Board does not adopt the cease and desist order as  
5 proposed, can Cal Am commit to a time certain by which  
6 it will reduce its diversions consistent with Water  
7 Board Order 95-10?

8 MR. SCHUBERT: I think we're doing it now.  
9 We're working on that Coastal Water Project as we  
10 speak. It's going through the review of permitting and  
11 the CEQA.

12 MR. MINTON: Does California American consider  
13 that a commitment to doing it by a time certain?

14 MR. SCHUBERT: I would consider that in my  
15 opinion, yes.

16 MR. MINTON: Is Cal American Water service  
17 company prepared to provide assurances or enforceable  
18 assurances that they will reduce their diversions by a  
19 time certain?

20 MR. SCHUBERT: In my opinion, I don't think we  
21 can actually say it will be done by this certain date.  
22 There's too many variables: Permitting, getting  
23 everything lined up with the design and the like. It's  
24 variable.

25 But at least right now, in the plan we have

1 laid out, we expect to have the Coastal Water Project  
2 completed and running by 2015.

3 MR. MINTON: Thank you. That concludes my  
4 questions.

5 CO-HEARING OFFICER BAGGETT: Thank you.  
6 Finally, Prosecution Team, how long do you anticipate?  
7 Should we take a break is the question.

8 MR. SATO: Twenty minutes.

9 CO-HEARING OFFICER BAGGETT: Twenty minutes.  
10 Why don't we take a quick break. We'll go off the  
11 record.

12 (Recess)

13 MR. JACKSON: I would like to correct a  
14 mistake I made in my cross-examination. I  
15 misidentified who I represent. I am representing the  
16 Carmel River Steelhead Association and not the  
17 California Sports Fishing Protection Alliance.

18 CO-HEARING OFFICER BAGGETT: Thank you. We  
19 will note that for the record. With that, let's  
20 continue. We're back for cross-examination of Cal Am  
21 by the Prosecution Team.

22 CROSS-EXAMINATION BY MR. SATO

23 FOR THE PROSECUTION TEAM

24 MR. SATO: Good morning, Mr. Schubert. My  
25 name is Reed Sato. I'm an attorney with the

1 Prosecution Team.

2 MR. SCHUBERT: Good morning.

3 MR. SATO: I just want to follow up on a few  
4 of the questions that Mr. Minton was asking you  
5 regarding the Urban Water Management Plan. I think you  
6 testified that you were familiar with Cal Am's Urban  
7 Water Management Plan; is that correct?

8 MR. SCHUBERT: In general, yes.

9 MR. SATO: And are you familiar with the  
10 current version of Cal Am's Urban Water Management  
11 Plan?

12 MR. SCHUBERT: In general, yes.

13 MR. SATO: Do you know what the date is of Cal  
14 Am's current Water Management District Urban Water  
15 Management Plan?

16 MR. SCHUBERT: I don't have that at my  
17 fingertips, no.

18 MR. SATO: Would you believe that the plan is  
19 dated around July 2006?

20 MR. SCHUBERT: Subject to check, I would agree  
21 with that.

22 MR. SATO: Now, do you know whether Cal  
23 Am's -- and can I just call it for the purposes of this  
24 discussion "the plan" so I don't have to call it the  
25 Urban Water Management Plan?

1 MR. SCHUBERT: You may.

2 MR. SATO: Thank you. Do you know whether  
3 the, Cal Am's plan provides for an urban water shortage  
4 contingency analysis?

5 MR. SCHUBERT: To my knowledge, I believe that  
6 is part of that plan, yes.

7 MR. SATO: And do you know whether the  
8 contingency analysis adopts the conservation and  
9 rationing provisions of the Monterey Peninsula Water  
10 Management District ordinance?

11 MR. SCHUBERT: You're getting into some  
12 specifics. I'd have to actually look at the plan to  
13 refresh my memory.

14 MR. SATO: So the answer is no, you don't  
15 know?

16 MR. SCHUBERT: No.

17 MR. SATO: Well, do you happen to know whether  
18 the -- Cal Am's plan contains stages of action to be  
19 undertaken by Cal Am in response to water supply  
20 shortages including up to a 50 percent reduction in  
21 water supply?

22 MR. SCHUBERT: Are you speaking about drought?

23 MR. SATO: I'm speaking about water supply  
24 shortages.

25 MR. SCHUBERT: I would interpret that to be a

1 drought situation, so yes.

2 MR. SATO: So you believe your plan does  
3 address that?

4 MR. SCHUBERT: I believe it does, yes, to my  
5 knowledge.

6 MR. SATO: Okay. And how does your plan  
7 address that?

8 MR. SCHUBERT: Again, I don't have the  
9 document in front of me, so I'm not going to be able to  
10 give you scripture and verse. But that information is  
11 in the plan; the plan says what it says.

12 MR. SATO: Do you have a general understanding  
13 what the plan says?

14 MR. SCHUBERT: I know that with conservation  
15 measures we have to, if it's necessary, we're kind of  
16 caught between the Commission and the Monterey  
17 Peninsula Water Management District. We basically have  
18 to go to those agencies to help us implement any type  
19 of conservation measures.

20 MR. SATO: Do you have any specific  
21 understanding of what Cal Am's plan does with regard to  
22 a 50 percent reduction in water supply?

23 MR. SCHUBERT: I can't say I do.

24 MR. SATO: Do you know whether the Cal Am plan  
25 contains an estimate of the minimum water supply

1 available during each of the next three water years  
2 based upon the driest three years' historical sequence?

3 MR. SCHUBERT: Not without having the document  
4 in front of me, no.

5 MR. SATO: And do you know whether Cal Am's  
6 plan contains actions to be undertaken by Cal Am to  
7 prepare for and implement during a catastrophic  
8 interruption of water supply?

9 MR. RUBIN: I'm going to object to the  
10 questioning. I'm trying to be patient again and limit  
11 my objections; but if I recall correctly, I asked a  
12 witness this very similar line of questions about  
13 documents. Mr. Sato objected to them as to either --  
14 made the point that either the documents speak for  
15 themselves or present the document to the witness,  
16 laying appropriate foundation, and then further ask  
17 questions about the knowledge -- the witness' knowledge  
18 about the document.

19 So this is an end-around by Mr. Sato to try to  
20 elicit information. The witness has already said that  
21 he's generally familiar with the document but is not  
22 specifically familiar with the document. And so I  
23 don't know if this is relevant; clearly, he hasn't laid  
24 the appropriate foundation.

25 MR. SATO: Well, I think I have laid the

1 foundation. He's said he's generally familiar, but  
2 he's not specifically familiar. So I'm asking him  
3 specific questions about elements of a document to see  
4 whether or not those are things that are contained with  
5 Cal Am's plan. And --

6 CO-HEARING OFFICER BAGGETT: He's answered the  
7 question. He's not specifically familiar.

8 MR. SATO: Well, so I'm asking him with regard  
9 to specific elements whether that causes him to recall  
10 whether or not those elements are within the plan.  
11 This isn't going to take much longer.

12 CO-HEARING OFFICER BAGGETT: Okay. Continue.  
13 Overruled.

14 MR. SCHUBERT: Could you repeat the question,  
15 please.

16 MR. SATO: Could you read the question back,  
17 please?

18 (Record read)

19 MR. SCHUBERT: Not specifically. I mean, I  
20 would say in general if that information is there, but  
21 I can't tell you what they are specifically, no.

22 MR. SATO: Can you tell me whether or not Cal  
23 Am's plan contains provisions to address consumption  
24 reduction methods in the most restrictive stages?

25 MR. SCHUBERT: I'd say generally speaking it

1 probably does. But again, any type of reductions, we'd  
2 have to go and seek approval not just from the  
3 California Public Utilities Commission but also from  
4 the Monterey Peninsula Water Management District. It's  
5 all tied together.

6 MR. SATO: Do you know whether the plan  
7 contains any measures to be addressed that are  
8 consistent with an up-to-50-percent reduction in water  
9 supply?

10 MR. SCHUBERT: I can't say I know.

11 MR. SATO: Do you know whether your plan has  
12 an analysis of the impacts of the items that I just  
13 mentioned on Cal Am and proposed measures to overcome  
14 those impacts such as development of reserves and rate  
15 adjustments?

16 MR. SCHUBERT: Generally, I'm sure that  
17 information is in there, but I'm not specifically aware  
18 of what they are.

19 MR. SATO: Do you have any understanding as to  
20 when Cal Am may be updating its plan?

21 MR. SCHUBERT: Whatever the requirements are.  
22 I believe the Urban Water Management Plan, the plan, I  
23 believe that's to be updated every five years.

24 MR. SATO: Now, you heard some testimony or  
25 some questions by Mr. Minton inquiring about the

1 completeness or incompleteness of the current plan. Do  
2 you know whether Cal Am has any -- well, do you have  
3 any understanding that the plan that you have submitted  
4 to the Department of Water Resources is incomplete?

5 MR. SCHUBERT: Mr. Minton provided a letter  
6 indicating that the plan was incomplete. But for all I  
7 know, sitting here right now, Cal Am may have provided  
8 the missing data, and the plan could now be complete.  
9 I don't know.

10 MR. SATO: All right. And so you are not  
11 aware of any plans by Cal Am to respond to the letter  
12 that Mr. Minton --

13 MR. SCHUBERT: Again, I think the company  
14 could have already submitted a response.

15 MR. SATO: Now, I'm just -- so the  
16 responsibility for addressing that plan, that's not  
17 part of the responsibility under your jurisdiction?

18 MR. SCHUBERT: I'm generally aware of the  
19 Urban Water Management Plan, but it's not a direct  
20 responsibility, no.

21 MR. SATO: Now, turning to your testimony on  
22 page 2, lines 3 and 4, you say that -- do you have that  
23 in front of you?

24 MR. SCHUBERT: Yes, I do.

25 MR. SATO: You say that:

1           Cal Am could not implement water supply  
2           projects sufficient to offset impacts  
3           that would be caused by the reductions  
4           proposed under the remedy in the draft  
5           cease and desist order.

6           What reductions specifically are you referring  
7 to in that testimony?

8           MR. SCHUBERT: I'm referring to the initial  
9 reduction of 15 percent and the ones that follow after  
10 that.

11          MR. SATO: Okay. So each reduction contained  
12 in the cease and desist order?

13          MR. SCHUBERT: Starting with the first one,  
14 yes.

15          MR. SATO: All right. Now, in your testimony  
16 you discuss seven wells in the upper Carmel Valley  
17 aquifer that are available for supply but limited to  
18 use only when flows are above 20 cubic feet per second.  
19 Correct?

20          MR. SCHUBERT: That's correct.

21          MR. SATO: And that's Los -- strike that.

22                 And that is Robles No. 3, Los Laureles 5 and  
23 6, Panetta 1 and 2, and Garzas 3 and 4; is that  
24 correct?

25          MR. SCHUBERT: Yes, that's correct.

1           MR. SATO: Now, are any of those wells limited  
2 to a maximum flow level of 1.2 cubic feet per second  
3 set in the conservation agreement discussed on page 2  
4 of your testimony?

5           MR. SCHUBERT: No, they are not.

6           MR. SATO: So that maximum flow level only  
7 applies to Russell No. 2 and Russell No. 4?

8           MR. SCHUBERT: Yes.

9           MR. SATO: What is the total acre feet amount  
10 that Cal Am annually produces from the wells in the  
11 upper Carmel Valley aquifer?

12          MR. SCHUBERT: I don't know.

13          MR. SATO: Do you believe that it's between  
14 500 acre feet to 1,000 acre feet per year?

15          MR. SCHUBERT: I -- subject to check, it  
16 sounds reasonable. But again, I don't know, don't have  
17 the specific data in front of me.

18          MR. SATO: Do you know if any of those wells  
19 in the upper Carmel Valley aquifer pump to the Begonia  
20 Iron Removal Plant?

21          MR. SCHUBERT: They do not. They pump  
22 directly into the distribution system.

23          MR. SATO: How about water from the Seaside  
24 Groundwater Basin; is that water pumped into the  
25 Begonia Iron Removal Plant?

1 MR. SCHUBERT: No.

2 MR. SATO: Where does that go?

3 MR. SCHUBERT: Depending on the wells, some of  
4 the wells have individual treatment or they pump  
5 directly into the distribution system in Seaside.

6 MR. SATO: And how about the Laguna Seca  
7 subarea? Does that pump into the Begonia Iron Removal  
8 Plant?

9 MR. SCHUBERT: No, it does not.

10 MR. SATO: And where does water from the  
11 Seaside Laguna subarea --

12 MR. SCHUBERT: Goes directly into the  
13 distribution system, depending on satellite systems.

14 MR. SATO: So in terms of satisfying Cal Am  
15 customers' demand, the Seaside wells also satisfy a  
16 portion of that demand; is that correct?

17 MR. SCHUBERT: Yes.

18 MR. SATO: Now, in your testimony, you also  
19 talk about the Begonia Iron Removal Plant backwashing  
20 water requirements. Do you recall that testimony?

21 MR. SCHUBERT: Yes.

22 MR. SATO: Is the water use for this operation  
23 pumped from the Carmel River?

24 MR. SCHUBERT: The water for backwashing the  
25 filters comes from the discharge side of the Begonia

1 Iron Removal Plant.

2 MR. SATO: So after it's used for backwashing,  
3 where does this water go?

4 MR. SCHUBERT: It ends up going back to the  
5 BIRP, and it either gets pushed back through the  
6 treatment process or it settles out in ponds on the  
7 site.

8 MR. SATO: And when it settles out in ponds on  
9 the site, then that recharges the groundwater?

10 MR. SCHUBERT: No. Ultimately it dries out,  
11 and then we remove the waste to offsite landfill.

12 MR. SATO: Do you know how much of the water  
13 goes to these ponds on an annual basis?

14 MR. SCHUBERT: Not off the top of my head, no.

15 MR. SATO: Any general estimate?

16 MR. SCHUBERT: No.

17 MR. SATO: Do you know whether or not there is  
18 a sufficient amount of water that otherwise goes to the  
19 ponds that might be used for recycling or for  
20 irrigation purposes?

21 MR. SCHUBERT: No, I can't say, but some of  
22 that water does go back through the head of the plant  
23 to be treated and delivered into the distribution  
24 system.

25 MR. SATO: Some of the water from the pond?

1 MR. SCHUBERT: Yes. On the recycled side,  
2 yes.

3 MR. SATO: But the rest is simply evaporated?

4 MR. SCHUBERT: Over time, yes.

5 MR. SATO: Do you know whether Cal Am has done  
6 any evaluation as to whether or not it could capture  
7 the water that would otherwise evaporate and be used in  
8 the system or for some other useful purpose?

9 MR. SCHUBERT: I'm not aware of a study being  
10 done, no.

11 MR. SATO: Now, you've identified existing  
12 demand deficiencies at the Begonia Iron Removal Plant  
13 may cause distribution pressures to drop below  
14 California PUC and public health standards. Do you  
15 recall that testimony?

16 MR. SCHUBERT: Yes.

17 MR. SATO: Now, what are those standards?

18 MR. SCHUBERT: The California Department of  
19 Public Health has a minimum system pressure of  
20 20 pounds per square inch, or psi. That's the absolute  
21 minimum that has to be maintained before we are out of  
22 compliance with the Department of Public Health.

23 And we run the risk of getting a Notice of  
24 Violation because we are putting customers at risk with  
25 no water coming out of taps and, perhaps more

1 importantly, not having any water available to fight a  
2 fire.

3           General Order 103 from the California Public  
4 Utilities Commission also has standards as far as  
5 pressure goes. Their normal operating pressure  
6 standard is 40 pounds per square inch; and under a peak  
7 day event, they expect you to maintain 30 pounds per  
8 square inch.

9           MR. SATO: I'm not familiar with these  
10 standards. I'm not familiar with the concept of a peak  
11 day versus a different type of day. Could you explain  
12 that?

13           MR. SCHUBERT: Sure. A peak day is that one  
14 day during the course of the year where the system  
15 produces the most amount of water that it can based on  
16 customer demand that can be delivered.

17           So I think in my testimony I indicate in the  
18 last five years the maximum day demand historically has  
19 been about 13 -- I'm sorry, 19.3 MGD. So the average  
20 day demand, which would be the average of water pumped  
21 into the system on any day, is 13.2 MGD, also over the  
22 last five years.

23           MR. SATO: Now, you said you have this  
24 potential drop in pressure. Are there other -- what  
25 activities can Cal Am undertake to raise that pressure?

1           MR. SCHUBERT: Well, we can encourage our  
2 customers to conserve. We can let people know that the  
3 water system is having some challenges, because it may  
4 be a hot day, could be that peak day. And it's not  
5 unusual in Monterey to have a number of peak days in a  
6 row, four or five days in a row; and eventually because  
7 we are in an existing deficit on our production  
8 capability, we're not going to be able to keep up with  
9 customer demand. So the reservoirs will start to drop,  
10 and we'll start seeing decreased pressures in the  
11 distribution system.

12           MR. SATO: I'm wondering, is there any kind of  
13 mechanical fix you could make to your system that would  
14 increase the water pressure?

15           MR. SCHUBERT: Yes, of course there is.

16           MR. SATO: What would that be? I mean, you  
17 say of course; but I'm not in your position, so can you  
18 tell me what is?

19           MR. SCHUBERT: One of the things we can do is  
20 continue with our efforts to reduce unaccounted-for  
21 water.

22           For example, in the Carmel Valley over the  
23 last five years, we have replaced 35,000 feet of  
24 24-inch main, old main, with new main to specifically  
25 address that issue.

1           And as part of the rate case filing that the  
2 Monterey District has currently under consideration by  
3 the Commission, we have a small main replacement  
4 program. Almost 600,000 feet of four-inch is targeted  
5 over the next 20 years, and about 135,000 feet of  
6 two-inch main is scheduled over the next five years  
7 representing significant capital dollars.

8           Those are some of the things that we can do to  
9 reduce or minimize a reduction in pressure.

10           MR. SATO: You mentioned those as examples.  
11 Can you tell me any other ways that you may be able to  
12 increase the pressure?

13           MR. SCHUBERT: You could try making  
14 improvements to the way a pump operates. If you have a  
15 pump that's operating more constantly or it's able to  
16 address any drop-off inefficiencies, and that way the  
17 water is continuing to be delivered at the same rate,  
18 goes through the treatment plant and ultimately the  
19 distribution system.

20           The company does a good job of monitoring its  
21 wells, its treatment plant, its reservoirs in order to  
22 make sure we are maintaining the adequate distribution  
23 system pressures.

24           MR. SATO: Well, I was just wondering because,  
25 you know, your testimony is that as a result of a

1 reduction in supply potentially called for by a cease  
2 and desist order issued to Cal Am, that it would have a  
3 negative effect on the pressure, and so what I'm  
4 inquiring from you is whether there are other things  
5 that Cal Am can do to increase the pressure from a  
6 mechanical or physical sense.

7 MR. SCHUBERT: We can pump more water, push  
8 more water into the system, keep the reservoirs full,  
9 keeps the pressure up.

10 I don't think we want to drill more wells  
11 because of the situation we're under, but that is an  
12 option. But at this point in time, I've already  
13 identified the supplies we have. We have a production  
14 deficit in order to meet the maximum day demand, and  
15 that's what we have to operate under with our  
16 California Department of Public Health rules as well as  
17 General Order 103 from the California Public Utilities  
18 Commission.

19 MR. SATO: And in terms of the types of fixes  
20 that you just described, the mechanical fixes that  
21 would increase the water pressure, how long do those  
22 take to implement?

23 MR. SCHUBERT: Well, that example I gave you  
24 in Carmel Valley with 35,000 feet of main, that was  
25 over a period of four and a half years.

1 MR. SATO: Now, if the -- strike that.

2 If Cal Am is able to eventually operate the  
3 Coastal Water Project, how would that operation affect  
4 the distribution that you just described? Does it  
5 affect it at all?

6 MR. SCHUBERT: It will improve the overall  
7 reliability of the system from a production standpoint.  
8 We'll have sufficient supply in order to meet customer  
9 demand.

10 MR. SATO: I'm not really that familiar with  
11 the Coastal Water Project. Will that water be also  
12 placed in the reservoirs that you identified in your  
13 testimony?

14 MR. SCHUBERT: I said that it will be involved  
15 as well as the Forest Lake tanks over in the Pebble  
16 Beach area, so yes.

17 MR. SATO: I think it was one other small  
18 reservoir that you mentioned, the Crest Reservoir?

19 MR. SCHUBERT: Yes.

20 MR. SATO: Would that be one also?

21 MR. SCHUBERT: Yeah, because Crest is at the  
22 top of the hill, yes.

23 MR. SATO: Now, in terms of this problem with  
24 water pressure, has Cal Am to the best of your  
25 knowledge ever advised the State Water Board of this

1 issue prior to issuance of the draft cease and desist  
2 order?

3 MR. SCHUBERT: I'm not aware of that being  
4 done, no.

5 MR. SATO: Now, I think you mentioned this  
6 previously, but I just wanted to make sure that I  
7 understood it. Are there any consequences to Cal Am  
8 resulting from a distribution pressure drop below the  
9 California Department of Health standards?

10 MR. SCHUBERT: We'd be in violation. We would  
11 more than likely get a violation, a Notice of Violation  
12 from the Department of Public Health, saying that we're  
13 not providing adequate pressure to serve our customers.

14 MR. SATO: And then what happens as a  
15 consequence of that Notice of Violation?

16 MR. SCHUBERT: They can choose to fine us.  
17 It's entirely their prerogative on what they could do.

18 MR. SATO: Do you know what the fines are?

19 MR. SCHUBERT: No.

20 MR. SATO: Has Cal Am ever received a fine  
21 from the California Department of Health Services for  
22 pressure-related issues?

23 MR. SCHUBERT: I can't say off the top of my  
24 head.

25 MR. SATO: You don't know?

1 MR. SCHUBERT: I don't know.

2 MR. SATO: Same question for the standards  
3 established by the PUC. What happens to Cal Am if you  
4 allow the pressure to drop in your system below the PUC  
5 standards?

6 MR. SCHUBERT: I can't say I know. I don't  
7 know.

8 MR. SATO: So you don't know whether Cal Am  
9 has ever received an enforcement action from the PUC  
10 related to a pressure system issue?

11 MR. SCHUBERT: I'm not aware of any.

12 MR. SATO: Directing your attention to page 4,  
13 lines 9 through 11.

14 MR. SCHUBERT: Yes.

15 MR. SATO: You talk about inadequate water  
16 volume. Do you see that?

17 MR. SCHUBERT: Yes.

18 MR. SATO: What do you mean by inadequate  
19 water volume?

20 MR. SCHUBERT: Basically just not water in the  
21 distribution mains to feed the hydrants that will be  
22 utilized by the fire department to fight a fire.

23 Again, that's related to pressure. The  
24 pressures drop below 20 pounds or even less, there's  
25 just not going to be enough water to be pumped out --

1 never mind pumped out, to just flow out under pressure  
2 from a hydrant.

3 MR. SATO: Is there any way that you can  
4 quantify what that adequate water volume would be?

5 MR. SCHUBERT: No.

6 MR. SATO: And let me ask the flip side. Can  
7 you quantify what an inadequate water volume would be?

8 MR. SCHUBERT: In my experience, fire  
9 departments typically like to have a minimum fire flow  
10 from a hydrant of 500 gallons per minute.

11 MR. SATO: Have you done an analysis as to  
12 whether or not the requirements of the draft cease and  
13 desist order if implemented would cause there to be  
14 less than 500 gallons per minute flow from the  
15 hydrants?

16 MR. SCHUBERT: No.

17 MR. SATO: Going back to inadequate water  
18 volume that would cause shortages, is there any kind of  
19 mechanical fix that you could implement to address this  
20 water volume issue?

21 MR. SCHUBERT: I think as I said before  
22 another source, another source of supply, an additional  
23 well. Take the flip side, if we had to comply with the  
24 draft cease and desist order of 15 percent next year,  
25 from my chair, that would be removing one of the seven

1 wells that I have in the lower Carmel Valley. So  
2 that's where I see that to be a challenge.

3 MR. SATO: You bring up a good point. Have  
4 you been involved in any discussions within Cal Am as  
5 to how Cal Am would respond to the imposition of the  
6 draft cease and desist order?

7 MR. SCHUBERT: We've had some general  
8 discussions.

9 MR. SATO: And you just mentioned that there  
10 was some idea that you had about how you would address  
11 the 15 percent reduction called for in the cease and  
12 desist order. Anything else that has been discussed  
13 with Cal Am in terms of how it would comply with such  
14 an order?

15 MR. SCHUBERT: Nothing specific yet, no.

16 MR. SATO: From your perspective, have you  
17 considered what would happen for a 35 percent reduction  
18 called for in the draft cease and desist order?

19 MR. SCHUBERT: No.

20 MR. SATO: How about 50 percent?

21 MR. SCHUBERT: No, other than I would be very  
22 concerned about being able to supply our customers  
23 under a maximum day condition, never mind under an  
24 average day condition.

25 MR. SATO: So is it your testimony that you

1 considered the potential for how Cal Am would respond  
2 to a 15 percent reduction, but you haven't evaluated  
3 any other alternatives beyond the 15 percent?

4 MR. SCHUBERT: We just barely looked at the  
5 15 percent.

6 MR. SATO: Before you were talking about  
7 mechanical fixes that you could make to the system in  
8 order to increase water pressure. Do you recall that  
9 testimony?

10 MR. SCHUBERT: Yes.

11 MR. SATO: The cost that Cal Am incurs to do  
12 that type of work, is that something that is subject to  
13 changes in the rates that it charges Cal Am's  
14 customers?

15 MR. SCHUBERT: Certainly, the Commission is  
16 the party that looks at what we put in our rate cases,  
17 and we have to get approval from the Commission for the  
18 capital expenditure before we can move forward with  
19 some of these projects.

20 MR. SATO: In other words, some of these  
21 things that you can do that would help increase  
22 pressure within the system are things that could be  
23 passed along to the ratepayers; is that correct?

24 MR. SCHUBERT: Yes. In fact, the 35,000 feet  
25 of main I refer to that's already been done, that was

1 part of a rate case review, and that cost was passed on  
2 to customers, yes.

3 MR. SATO: Now, aside from the system issue  
4 related to water pressure, are there any other  
5 potential system problems that you're testifying to?

6 MR. SCHUBERT: No. I think I hit it on the --  
7 must have hit it on the head; it's an issue of having  
8 an existing deficit in production capacity.

9 MR. SATO: Now, on page 4, line 21 of your  
10 testimony, of your written testimony, you state that  
11 reductions already result in current demand exceeding  
12 supply.

13 MR. SCHUBERT: Where are you at?

14 MR. SATO: Oh, I'm sorry. Page 4, line 21 of  
15 your written testimony.

16 MR. SCHUBERT: Yes.

17 MR. SATO: So you are saying right now, even  
18 without the imposition of the draft cease and desist  
19 order, that there is already a demand that exceeds  
20 supply; correct?

21 MR. SCHUBERT: That is correct.

22 MR. SATO: So if Cal Am is already in the  
23 position where it does not have supply to meet existing  
24 demands, do you know whether development is still being  
25 allowed to continue in the service area which would

1 require additional water supply?

2 MR. SCHUBERT: No, I'm not aware.

3 MR. SATO: Directing your attention to page 5,  
4 lines 11 and 12 of your written testimony, do you see  
5 that, where you testify that the total annual weather  
6 adjusted average day demand for the Main Monterey  
7 system has been about 13.2 MGD over the last five  
8 years?

9 MR. SCHUBERT: Yes.

10 MR. SATO: Is that about 40 acre feet per day,  
11 do you know?

12 MR. SCHUBERT: I'll rely on your calculation.

13 MR. SATO: Well --

14 MR. SCHUBERT: That probably is right. I  
15 don't know if that's the exact number, but it sounds  
16 about right.

17 MR. SATO: Okay. Now, in terms of the last  
18 five years, can you tell me specifically what years  
19 you're referring to?

20 MR. SCHUBERT: 2006, '5, '4, '3 and '2, so  
21 2002 through 2006.

22 MR. SATO: Now, you're talking about a demand  
23 for water. Now, is a portion of this demand satisfied  
24 from supplies from the Seaside Groundwater Basin?

25 MR. SCHUBERT: Yes.

1           MR. SATO: And also is part of this demand  
2 satisfied by the upper wells in the Carmel Valley that  
3 you identified previously?

4           MR. SCHUBERT: It depends on the time of year.

5           MR. SATO: But if they're used --

6           MR. SCHUBERT: If they're used, they would be  
7 used towards the demand. But in meeting a maximum day  
8 demand, those upper Carmel Valley wells would not be  
9 used simply because of the restrictions placed on us  
10 with the conservation agreement with NOAA Fisheries.

11           MR. SATO: And would water for the Sand City  
12 desalination plant also satisfy a portion of this  
13 demand?

14           MR. SCHUBERT: Yes.

15           MR. SATO: Are there other -- besides the ones  
16 I just identified, are there other sources other than  
17 the Carmel River used by Cal Am to meet the demand that  
18 you identified?

19           MR. SCHUBERT: No, that's it.

20           MR. SATO: When you talked about demand in  
21 your testimony, did you apply any reduction to the  
22 existing demand resulting from any conservation  
23 measures?

24           MR. SCHUBERT: Are you referring to the 13.2  
25 number?

1 MR. SATO: Correct.

2 MR. SCHUBERT: No.

3 MR. SATO: Do you know whether any additional  
4 conservation or restrictions on outside water would  
5 reduce Cal Am's current demand?

6 MR. SCHUBERT: It could. But again, it  
7 depends on what the customer decides to do. I think  
8 the customers in Monterey personally have done a great  
9 job conserving water.

10 MR. SATO: Directing your attention to page 5,  
11 lines 24 to 25.

12 MR. SCHUBERT: Yes.

13 MR. SATO: See that last sentence starting  
14 with: Any new reductions?

15 MR. SCHUBERT: Yes.

16 MR. SATO: What's that sentence mean? I'm  
17 just having a hard time reading it. Maybe you could  
18 reinterpret it for me.

19 MR. SCHUBERT: Basically, I think it's the  
20 same thing we've been saying all along. Any additional  
21 reductions in existing sources of supply is just going  
22 to compound the problem we have with a deficient  
23 production capacity.

24 So as I said before, if a 15 percent reduction  
25 offered by the draft cease and desist order is passed

1 on to us, that's basically removing one of the wells I  
2 have in the lower Carmel Valley aquifer to supply water  
3 to customers. So that deficit of 3.8 MGD will increase  
4 probably by 1.2, 1.3 MGD, so almost up to five MGD.  
5 That's what I'm trying to get at.

6 MR. SATO: And tell me again why this is  
7 significant in your mind?

8 MR. SCHUBERT: At the end of the day, I want  
9 to ensure that I'm able to supply water to our  
10 customers under a maximum day demand.

11 MR. SATO: And you've made no evaluation as to  
12 whether that demand is reasonable or unreasonable?

13 MR. SCHUBERT: The maximum day demand?

14 MR. SATO: Yes.

15 MR. SCHUBERT: Actually, we have historical  
16 records that support that over the last five years.  
17 It's been -- 19.3 has been the peak number.

18 MR. SATO: I mean in terms of you've made no  
19 qualitative judgment as to whether or not the demand  
20 that they're making is for, you know, reasonable  
21 purposes or unreasonable purposes; correct?

22 MR. SCHUBERT: Yes, that's correct.

23 MR. SATO: Now -- I'm sorry. One sentence up  
24 from that where you talk about the situation represents  
25 an overall system reliability issue. Can you explain

1 that to me? Why does this difference represent a  
2 system reliability issue?

3 MR. SCHUBERT: Because right now I do not have  
4 exist -- I do not have sufficient source of supply in  
5 order to meet customer demand in order -- on a maximum  
6 day condition. That's a liability issue.

7 When you look at California Department of  
8 Public Health as well as General Order 103 and their  
9 regulations, one of things we have to be able to do is  
10 adequately, dependably, and safely provide service to  
11 customers under a maximum day event, and that's why I  
12 say that in my testimony.

13 MR. SATO: Now, do you contend that Cal Am has  
14 a legal obligation to provide sufficient water to meet  
15 demand?

16 MR. RUBIN: I'm going to object; asks for a  
17 legal conclusion.

18 CO-HEARING OFFICER BAGGETT: I would sustain.

19 MR. SATO: Do you believe that Cal Am has an  
20 obligation to provide sufficient water to meet demand?

21 MR. SCHUBERT: Yes.

22 MR. SATO: And do you believe that Cal Am has  
23 such an obligation even if it has to supply water from  
24 a source for which it does not or may not have legal  
25 appropriative rights?

1           MR. SCHUBERT: That's not for me to say. My  
2 job is to make sure that there is adequate supply to  
3 provide water to customers. I'm not sure I understand  
4 your question.

5           MR. SATO: Your job is to supply the water  
6 regardless of the source?

7           MR. SCHUBERT: Yep.

8           MR. SATO: Do you know, what would Cal Am do  
9 if the new water source -- strike that.

10           What would Cal Am do for a new water source if  
11 the Coastal Water Project never comes to fruition?

12           MR. SCHUBERT: I think it causes me to  
13 speculate. Right now, California American's supply for  
14 the future is the Coastal Water Project. That's the  
15 project we're pursuing.

16           MR. SATO: Do you know whether or not Cal Am  
17 has developed any contingency in the event that the  
18 Coastal Water Project does not come to fruition?

19           MR. SCHUBERT: Well, contingencies are being  
20 evaluated by the California Public Utilities Commission  
21 as part of the EIR process, so there will be a  
22 preferred project as well as alternative projects that  
23 will come out of that study.

24           MR. SATO: Right I understand. Those were  
25 alternatives to the Coastal Water Project. But what

1 I'm asking is: Do you know whether or not there has  
2 been any discussions within Cal Am to what it might do  
3 in the event the Coastal Water Project does not go  
4 forward?

5 MR. RUBIN: I'm going to object to the  
6 question. I think it was already asked and answered.  
7 Mr. Schubert explained that the alternatives that are  
8 potential if the Coastal Water Project is not approved  
9 are being evaluated as part of the Coastal Water  
10 Project Environmental Impact Report.

11 MR. SATO: Well, and I think that he's just  
12 talking about alternatives that are being evaluated  
13 now. I'm asking whether or not Cal Am has had any  
14 internal discussion about what it would do in the event  
15 that the Coastal Water Project doesn't go forward.

16 CO-HEARING OFFICER BAGGETT: Let the witness  
17 answer the question.

18 MR. SCHUBERT: Let's assume the Coastal Water  
19 Project doesn't go forward. I'm going to assume that  
20 one of the alternate projects offered up came into  
21 being. Let's take the REPOG project that's been talked  
22 about. That would be your alternative project.

23 MR. SATO: I'm not asking you what you would  
24 assume. I'm asking if you're aware of any discussions  
25 within Cal Am as to what it would do in the event that

1 Coastal Water Project does not come into fruition.

2 MR. SCHUBERT: No, I'm not aware of any  
3 discussions.

4 MR. SATO: Couple last questions. What  
5 sources of water can Cal Am secure other than the ASR,  
6 the Seaside Groundwater Basin, and the Table 13  
7 landowners' water supply in addition to the Coastal  
8 Water Project to the best of your knowledge?

9 MR. RUBIN: I'm going to object; calls for  
10 speculation.

11 MR. SATO: I asked to the best of his  
12 knowledge.

13 CO-HEARING OFFICER BAGGETT: Please answer, to  
14 the best of your knowledge.

15 MR. SCHUBERT: I don't have any knowledge. To  
16 the best of my knowledge, Sorry.

17 MR. SATO: Do you know whether Cal Am has a  
18 water management strategy?

19 MR. SCHUBERT: Could you be more specific? I  
20 mean, that's pretty general.

21 MR. SATO: Sure. Water management strategy,  
22 for the purpose of my question, is a plan to reduce the  
23 demand upon the raw water supply and treated or  
24 finished water. So with that definition in mind, do  
25 you know whether Cal Am has a water management

1 strategy?

2 MR. SCHUBERT: I'd say we have a strategy  
3 right now, the way we optimize the water that is pumped  
4 from Seaside as well as the water that's pumped from  
5 the lower Carmel Valley.

6 I mean our operations folks pretty much have  
7 that system fine-tuned, which wells to pump a little  
8 harder and which ones we need to back off on. So from  
9 a resource perspective, I think we have a good plan in  
10 place right now.

11 MR. SATO: If I ask you for a written copy of  
12 that strategy, where would I find it?

13 MR. SCHUBERT: If a written copy existed, it  
14 would be at the District office. But sometimes these  
15 plans are in our operators' minds on how they best  
16 operate the system. So it won't be a document per se  
17 that would go A, B, C, and D, and these are the things  
18 that you do.

19 MR. SATO: Okay. So recalling my definition  
20 of water management strategy, do you know whether Cal  
21 Am has a written water management strategy?

22 MR. SCHUBERT: I don't know off the top of my  
23 head.

24 MR. SATO: No further questions.

25 CO-HEARING OFFICER BAGGETT: Thank you. Any

1 questions from staff?

2 CHIEF COUNSEL TAYLOR: Yes.

3 --o0o--

4 EXAMINATION BY THE HEARING TEAM

5 --o0o--

6 CHIEF COUNSEL TAYLOR: I'm going to go back  
7 over some of the same ground, and I apologize if it  
8 sounds like I'm asking you the same questions.  
9 Sometimes I'm not sure what I heard or didn't hear in  
10 your responses.

11 You testified earlier in response to questions  
12 about the importance of maintaining water pressure. Is  
13 water pressure maintained primarily by assuring that  
14 adequate water is in storage, or are there other  
15 factors?

16 MR. SCHUBERT: Well, not just storage but also  
17 what's being pumped into the system by the wells. So  
18 the combination of factors.

19 CHIEF COUNSEL TAYLOR: Is water -- does water  
20 go directly from the wells to the filter to customers  
21 without going to storage?

22 MR. SCHUBERT: It depends where in the  
23 distribution system the customers are. Some customers  
24 get it directly off the main. Other ones will get it  
25 indirectly through distribution storage before it goes

1 back into the distribution system. It depends on where  
2 they are.

3 CHIEF COUNSEL TAYLOR: Okay. What communities  
4 are served from the Carmel Valley filter plant or what  
5 area is served from that plant?

6 MR. SCHUBERT: From the Carmel Valley filter  
7 plant?

8 CHIEF COUNSEL TAYLOR: Yes.

9 MR. SCHUBERT: Basically that would be the  
10 area of the Carmel Valley Village, the village up  
11 there, I want to say 15 miles more or less south of  
12 Carmel.

13 CHIEF COUNSEL TAYLOR: Is that portion of your  
14 water supply system that serves that area operated  
15 independently from the downstream system?

16 MR. SCHUBERT: No. Actually it's not.  
17 Certain times of the year, the wells that -- the  
18 Russell wells that pump into Carmel Valley filter plant  
19 supply the Village. But then during other parts of the  
20 year, when we can't use Russell wells as much as we  
21 want, the water actually gets pumped back up from the  
22 valley to a booster station that we have on the main in  
23 order to provide service to the customers in Carmel  
24 Valley Village.

25 CHIEF COUNSEL TAYLOR: You made an issue and

1 raised the question in your written testimony about the  
2 importance of how the filters are operating. Are they  
3 in fact a constraint, a real-world constraint on how  
4 much water must be maintained in the system to satisfy  
5 customer needs?

6 MR. SCHUBERT: Yes, they are a constraint.

7 CHIEF COUNSEL TAYLOR: In the spring.

8 MR. SCHUBERT: When the demand starts  
9 increasing, gets high, yeah, it makes it very  
10 challenging. So they will -- there is a constraint, we  
11 have to backwash the filters.

12 CHIEF COUNSEL TAYLOR: Is that during the  
13 spring when you are obtaining water from surface  
14 supplies as well as from groundwater?

15 MR. SCHUBERT: We're not taking any surface  
16 supply. We haven't taken any surface supply from the  
17 San Clemente Dam since the fall of 2001.

18 CHIEF COUNSEL TAYLOR: All right. Now I need  
19 to ask some other questions. During normal operations,  
20 how frequently is each filter at the Begonia Iron  
21 Removal Plant backwashed? Is it hourly, daily, weekly?  
22 Give me a feel for it.

23 MR. SCHUBERT: Depends on the time of the  
24 year.

25 CHIEF COUNSEL TAYLOR: Okay.

1           MR. SCHUBERT: You could be pumping the wells  
2 a little harder. It can average anywhere from every 24  
3 to 36 hours.

4           CHIEF COUNSEL TAYLOR: Per filter?

5           MR. SCHUBERT: Per filter.

6           CHIEF COUNSEL TAYLOR: And how long does it  
7 take to backwash the filter?

8           MR. SCHUBERT: Again, it can vary. But it can  
9 be anywhere from 20 to 30 minutes for the whole cycle  
10 to be completed.

11          CHIEF COUNSEL TAYLOR: When you say the whole  
12 cycle, you mean for one filter or for all 18?

13          MR. SCHUBERT: For one filter.

14          CHIEF COUNSEL TAYLOR: Okay. You spoke of the  
15 importance of maintaining water at the Segunda  
16 Reservoir, and that's to assist your booster pumps  
17 which lift water to the Crest Reservoir.

18          MR. SCHUBERT: Yes.

19          CHIEF COUNSEL TAYLOR: Give me a sense of how  
20 many gallons of water need to be released from Segunda  
21 to lift water to the Crest Reservoir? Say five gallons  
22 released to one gallon lifted? Give me a feel for  
23 that.

24          MR. SCHUBERT: When water that's being pumped  
25 at the Crest ultimately is flowing into Seaside, so

1 from a percentage basis, I'll just say maybe 20 percent  
2 is going through the booster station to Crest over to  
3 Seaside. The rest is headed west to the peninsula.

4 CHIEF COUNSEL TAYLOR: I don't think I made my  
5 question clear. In order to lift water to Crest, how  
6 many gallons have to be released from Segunda to lift a  
7 gallon to Crest?

8 MR. SCHUBERT: Well, there's a booster station  
9 right at the Segunda Reservoir, and if memory serves,  
10 the pumping capacity of those pumps is about  
11 4500 gallons per minute. So we could -- you could pump  
12 anywhere from one million gallons a day to three  
13 million gallons a day.

14 CHIEF COUNSEL TAYLOR: Okay. Let's go to your  
15 testimony, maybe we can get this better focused.

16 MR. SCHUBERT: Sure.

17 CHIEF COUNSEL TAYLOR: Page 3, lines 7 through  
18 14.

19 MR. SCHUBERT: Yes. Segunda is basically  
20 halfway up the hill from --

21 CHIEF COUNSEL TAYLOR: I'm sorry. Line 9  
22 through 14. Let me read this:

23 It is important to understand the  
24 Segunda Reservoir is critical because it  
25 provides suction pressure with three

1            booster pumps.

2            I'm assuming the suction pressure is provided  
3 by releasing water from Segunda for service --

4            MR. SCHUBERT: Correct.

5            CHIEF COUNSEL TAYLOR: -- to assist the  
6 booster pumps.

7            MR. SCHUBERT: Again, they draw directly out  
8 of the reservoir. The booster station is right there  
9 next to it.

10           CHIEF COUNSEL TAYLOR: Let's try it a  
11 different way. If you had no suction pressure from  
12 releasing water at Segunda, would you be able to keep  
13 the Crest Reservoir supplied?

14           MR. SCHUBERT: No.

15           CHIEF COUNSEL TAYLOR: What's missing?

16           MR. SCHUBERT: What's missing?

17           CHIEF COUNSEL TAYLOR: Yeah, to be able to do  
18 that.

19           MR. SCHUBERT: If the -- well, the Segunda  
20 Reservoir, whether it's full or half full, you'd still  
21 be able to have adequate suction pressure at that  
22 booster station so those pumps can pump up to Crest.

23           At some point in time, if the Segunda  
24 Reservoir drops to zero, then you're not going to have  
25 any water at all available to pump out of the booster

1 station up to Crest.

2 CHIEF COUNSEL TAYLOR: See, I misunderstood  
3 what you meant by suction pressure. You're simply  
4 talking about sufficient water in the reservoir.

5 MR. SCHUBERT: Yes.

6 CHIEF COUNSEL TAYLOR: To draw upon.

7 MR. SCHUBERT: Yes.

8 CHIEF COUNSEL TAYLOR: Thank you.

9 Does the water company have contingency plans  
10 for getting water to Crest Reservoir if there is not  
11 sufficient water in the Segunda Reservoir?

12 MR. SCHUBERT: The contingency plan would be  
13 to ensure we can provide service to customers in  
14 Seaside from the Seaside supplies up to the amount that  
15 we're allowed to under the current judgment in the  
16 adjudication of that basin.

17 CHIEF COUNSEL TAYLOR: You make reference to  
18 periods of peak customer demand. I assume that occurs  
19 on a daily and a monthly and on a seasonal basis, you  
20 have different responses in terms of what peak demand  
21 is. What is peak demand on a daily basis?

22 MR. SCHUBERT: On average, I think my  
23 testimony indicated the average over the last five  
24 years has been about 13.2 million gallons a day on any  
25 day.

1 CHIEF COUNSEL TAYLOR: I'm not talking about  
2 quantities, I'm talking about times. What times of  
3 day.

4 MR. SCHUBERT: Oh, times of the day?

5 CHIEF COUNSEL TAYLOR: Yes, sir.

6 MR. SCHUBERT: I don't know off the top of my  
7 head because each water system that I'm familiar with  
8 over the years has different peak times.

9 For example, in New Mexico our peak period is  
10 from 5:00 a.m. to 9:00 a.m. If I had to venture a  
11 guess in Monterey without checking, it's probably late  
12 morning to early afternoon.

13 CHIEF COUNSEL TAYLOR: And seasonally what  
14 would peak demand be? What months of the year?

15 MR. SCHUBERT: Oh, with the peak demand, it  
16 would go anywhere from late spring, say late May, to  
17 early September.

18 CHIEF COUNSEL TAYLOR: Does the water company  
19 provide service for new connections to its system?

20 MR. SCHUBERT: Only after they have been  
21 approved by the Monterey Peninsula Water Management  
22 District.

23 CHIEF COUNSEL TAYLOR: So the answer is you do  
24 provide new service connections?

25 MR. SCHUBERT: When all the proper approvals

1 have been received, yes.

2 CHIEF COUNSEL TAYLOR: As an engineer, if  
3 you've got a system where you don't have sufficient  
4 water to meet existing demands, does it make sense to  
5 be adding new connections, strictly from an engineering  
6 point of view?

7 MR. SCHUBERT: It doesn't make sense. I agree  
8 with you.

9 CHIEF COUNSEL TAYLOR: On page 5, line 11  
10 through 13 -- line 11 actually, there's a reference to  
11 weather-adjusted average day demand. What do you mean  
12 by that statement?

13 MR. SCHUBERT: The number was, the average was  
14 fine-tuned a little bit depending on whether it was a  
15 wet year or a dry year. That's all it means.

16 CHIEF COUNSEL TAYLOR: How does the  
17 fine-tuning occur? I'm not understanding what  
18 adjustment you're making.

19 MR. SCHUBERT: Basically was on an overall  
20 system delivery basis.

21 CHIEF COUNSEL TAYLOR: This question may not  
22 be proper to you; perhaps Mr. Rubin can help. Can you  
23 tell this forum what average daily demand is on a  
24 month-by-month basis over the past five years?

25 MR. SCHUBERT: I don't have that information

1 handy, but I think we can provide that.

2 CHIEF COUNSEL TAYLOR: Mr. Rubin, I don't know  
3 whether you have that information to submit to this  
4 forum?

5 CO-HEARING OFFICER BAGGETT: You'll have an  
6 opportunity in rebuttal if you want to bring it in. Do  
7 you want to take a break?

8 MR. RUBIN: We can see what we can do. I'm  
9 not sure we'll be able to produce it by the time we  
10 have to present our rebuttal case, but I don't believe  
11 it's been presented as evidence by the California  
12 American Water Company to date in this proceeding.

13 CHIEF COUNSEL TAYLOR: On page 5, lines 20  
14 through 31, you reference firm production capacity  
15 deficit. Tell me again how you define that.

16 MR. SCHUBERT: Firm capacity -- firm  
17 production capacity deficit, right now, is the fact  
18 that we have a demand of X, and we have a source of  
19 supply amount of Y. And right now, my source of supply  
20 is nowhere near to meeting my current demand.

21 CHIEF COUNSEL TAYLOR: I assume this would  
22 occur during times of peak demand?

23 MR. SCHUBERT: That is correct, during a max  
24 day.

25 CHIEF COUNSEL TAYLOR: And roughly how many

1 days a year would this problem occur?

2 MR. SCHUBERT: As I indicated earlier, in  
3 Monterey, you could have a week of maximum day demands,  
4 almost perhaps even two weeks, you know. But typically  
5 a maximum day happens one day a year. But you could  
6 have, as I said, three, five days in a row where the  
7 demand is almost the same one day after the next.

8 CHIEF COUNSEL TAYLOR: So I assume this occurs  
9 in the -- during the hotter months of the year.

10 MR. SCHUBERT: Yes.

11 CHIEF COUNSEL TAYLOR: So you're saying during  
12 most years this problem might occur for only 7 to  
13 14 days a year?

14 MR. SCHUBERT: Yes. But remember, as part of  
15 our requirements with the California Department of  
16 Public Health as well as General Order 103, and the  
17 California Public Utilities Commission, we have to  
18 ensure that we have adequate supply to meet the maximum  
19 day demand at all times.

20 CHIEF COUNSEL TAYLOR: Does the three million  
21 gallon current firm production deficit in the supplies  
22 available to you include the water that the water  
23 company is diverting from the Carmel River without a  
24 basis of right?

25 MR. RUBIN: I would object to the question as

1 a characterization of without a basis of right. I  
2 think that's a determination that has yet to be made.

3 It's California American Water Company's  
4 position that 95-10 provides a basis of right, although  
5 it might not be a water -- an appropriative water  
6 right.

7 CHIEF COUNSEL TAYLOR: Your exception noted.  
8 Let me rephrase the question. I need to come up with  
9 an exact number --

10 MR. RUBIN: Just for the record, I presume  
11 that that was a misstatement, and there hasn't been a  
12 pre-determined decision on the issue.

13 (Laughter)

14 CO-HEARING OFFICER WOLFF: How could you think  
15 that?

16 CHIEF COUNSEL TAYLOR: Does it include all the  
17 water that is currently being pumped from the Carmel  
18 River with the current water pumps?

19 MR. SCHUBERT: Yes.

20 CHIEF COUNSEL TAYLOR: All right. No more  
21 questions.

22 ENVIRONMENTAL SCIENTIST FARWELL: I have one  
23 question.

24 Mr. Schubert, do you know what are considered  
25 the hottest days of the year in Monterey?

1           MR. SCHUBERT: I'd say primarily July and  
2 August, to my knowledge.

3           ENVIRONMENTAL SCIENTIST FARWELL: Okay. Thank  
4 you.

5           CO-HEARING OFFICER WOLFF: Just for the  
6 record, the basis of right statement was made by a  
7 member of staff, not by the Hearing Officer.

8           I'm trying to understand the demand deficit  
9 that you talked about. You've identified it as 3.8  
10 MGD, but elsewhere in your testimony, you've talked  
11 about storage equal to one and a half million gallons  
12 at the Segunda Reservoir and another quarter million in  
13 the Crest Reservoir.

14           So there are probably other distribution  
15 reservoirs in the system. I don't know what your total  
16 system capacity is. What I'm trying to get at: How  
17 long could you sustain that 3.8 MGD deficit? If volume  
18 into the system is less than volume out of the system,  
19 you have pressure drop, right? So there's a certain  
20 period of time which you could sustain that imbalance.  
21 Depends on how much storage you have in system, right?  
22 So how long would that be?

23           MR. SCHUBERT: Off the top of my head, maybe,  
24 maybe two, two and a half days, and that's if we don't  
25 have a fire.

1 CO-HEARING OFFICER WOLFF: Right. I

2 understand what you mean.

3 MR. SCHUBERT: Right.

4 CO-HEARING OFFICER WOLFF: And so you have  
5 3.8 million gallons per day times two and a half days  
6 of storage someplace in the system that allows you to  
7 sustain that deficit for roughly that number of days?

8 MR. SCHUBERT: I just don't know if I would  
9 calculate it that way, but there is storage in the  
10 distribution system that allows us to, you know,  
11 alleviate this gap.

12 But the bottom line is right now I don't have  
13 production capability to meet the maximum day demand of  
14 customers.

15 CO-HEARING OFFICER WOLFF: I understand, but  
16 your testimony only includes enough storage to  
17 compensate for maybe half a day of the deficit, yet you  
18 tell me you have two days or more of capacity. And  
19 there are only two ways to make that up that I'm aware  
20 of hydraulically. One is additional storage.

21 MR. SCHUBERT: Right.

22 CO-HEARING OFFICER WOLFF: And the other is  
23 that there is some amount of volume loss you can --  
24 that is accommodated by the drop in pressure, normal  
25 operating pressure, before you hit 20 psi.

1 MR. SCHUBERT: Correct.

2 CO-HEARING OFFICER WOLFF: So you've got  
3 significantly more storage than the storage described  
4 in your testimony. Do you know roughly what the  
5 in-system storage is?

6 MR. SCHUBERT: The instances of storage?

7 CO-HEARING OFFICER WOLFF: In distribution  
8 system storage, the total of all reservoirs in the  
9 system?

10 MR. SCHUBERT: Oh, there's a total of close to  
11 90 different distribution tanks, with Monterey --  
12 besides being a majority of it, a main pressure zone,  
13 gravity zone, there are multiple upper pressure  
14 gradients that have numerous tanks in that 90 number,  
15 so it's a complicated system.

16 Not only do I have to keep enough storage in  
17 the main system, but that storage has to help us  
18 provide service to customers that live at higher  
19 gradients.

20 CO-HEARING OFFICER WOLFF: Right. So you  
21 don't know the total volume of that distributed  
22 storage?

23 MR. SCHUBERT: Off the top of my head, I'd  
24 have to look it up. But, you know, it's probably in  
25 the order of magnitude of 20, 25 million gallons. I

1 mean, it's something quickly I could look up, but we  
2 have -- for example, there is 15 million gallons of  
3 storage at the Forest Lake tank, and there's three of  
4 them there; they're five million gallons each. And  
5 that's -- those are the heart of the system as far as  
6 providing adequate pressure and supply to those  
7 customers as well as all the way around to Monterey.

8 CO-HEARING OFFICER WOLFF: All right. That  
9 helps a lot with understanding the liability issue.  
10 Great.

11 Then returning to the Coastal Water Project,  
12 earlier you were citing a completion date or at least a  
13 current scheduled completion date of 2015. And you  
14 were reciting some of the interim deadlines. But I  
15 don't have a complete schedule, at least I'm not aware  
16 of a complete schedule for the project. Is there one  
17 in the record that you're aware of?

18 MR. SCHUBERT: For some reason I thought there  
19 was an exhibit in maybe my Phase 1 testimony, but --

20 CO-HEARING OFFICER WOLFF: There may be, and  
21 I'm just not aware of it today. That's why I'm asking.  
22 If there is not such an exhibit, do you object to  
23 providing such an exhibit?

24 MR. SCHUBERT: Not at all. In fact, I have --  
25 yeah, we can provide one.

1 CO-HEARING OFFICER WOLFF: Great.

2 Yesterday I asked a number of questions of the  
3 Monterey Peninsula Water Management District about  
4 water conservation, and some of the basic data  
5 involved. And I don't want to run through that entire  
6 list again.

7 But I do want to ask you at the highest level  
8 whether some of this information is in the possession  
9 of California American. Does California American to  
10 your knowledge know approximately the amount, the  
11 percentage of total water use, outdoor versus indoor?

12 MR. SCHUBERT: I'd say in general we know.  
13 But remember, the customers only have one meter, and  
14 that meter basically serves the inside and outside  
15 uses. So there is an estimate out there, but I don't  
16 think anything has been calculated to say customer A  
17 has 50 percent outside versus 50 percent inside.

18 CO-HEARING OFFICER WOLFF: I understand the  
19 inaccuracies involved, but what is that general  
20 approximate distribution to the best of your knowledge?

21 MR. SCHUBERT: I don't know off the top of my  
22 head.

23 CO-HEARING OFFICER WOLFF: Again, is it  
24 something you wouldn't mind providing?

25 MR. SCHUBERT: Sure. If we have that

1 information, yes.

2 CO-HEARING OFFICER WOLFF: Okay.

3 MR. SCHUBERT: Yes. And the confidentiality  
4 issues that we have with the customer data that we are  
5 working through right now with the California Public  
6 Utilities Commission.

7 CO-HEARING OFFICER WOLFF: Well, I understand  
8 the concern about providing disaggregated data, getting  
9 into individual customer account data or even the  
10 subservice area data, but the total aggregated data for  
11 the area, telling me what percentages, indoor versus  
12 outdoor, do you believe that that, you know, would  
13 breach confidentiality in some way?

14 MR. SCHUBERT: I don't know. I really don't  
15 know.

16 CO-HEARING OFFICER WOLFF: Okay.

17 MR. RUBIN: Dr. Wolff, we will talk at the  
18 appropriate time internally if it's possible to provide  
19 it to you.

20 CO-HEARING OFFICER WOLFF: Fair enough, fair  
21 enough. That's fine.

22 The harder question has to do with the  
23 plumbing fixtures, the appliances and so forth, similar  
24 to the questions I asked yesterday.

25 Do you believe California American knows what

1 percentage of appliances or plumbing fixtures fall into  
2 various water use categories such as toilets that use  
3 less than 1.6 gallons per flush versus those that use  
4 more than 1.6 gallons per flush and so forth?

5 MR. SCHUBERT: I don't know that information.

6 CO-HEARING OFFICER WOLFF: You don't know  
7 whether California American has that information or  
8 not?

9 MR. SCHUBERT: I don't know.

10 CO-HEARING OFFICER WOLFF: That's fair enough.

11 I want to understand the issue of supply  
12 falling short of demand. Your testimony talks about  
13 the importance of maintaining supply and demand.  
14 California American seems to have some means for  
15 controlling demand during an emergency. Can you tell  
16 me what the physical means would be for reducing demand  
17 in an emergency and maintaining supply pressure?

18 MR. SCHUBERT: Well, I don't think we can just  
19 go out and start turning off outside services, for  
20 example, for landscaping purposes. That would be  
21 something we'd have to at least request permission from  
22 not just the District but also from the Commission to  
23 go and start turning off customer connections, for  
24 example, in order to keep our water in the tanks and  
25 keep the pressure up.

1 CO-HEARING OFFICER WOLFF: Well, you tell me  
2 what you can't do. I mean, is there anything you're  
3 aware that you can do, or are you testifying that there  
4 is simply no way to control demand?

5 MR. SCHUBERT: No. I'd say right now the  
6 company has been proactive with voluntarily asking  
7 customers to conserve. Every spring we see news  
8 articles that are -- or articles in the newspaper  
9 saying customers, please conserve. I mean, there is  
10 always constant reminders to the Monterey customers to  
11 conserve water as best they can.

12 CO-HEARING OFFICER WOLFF: I understand. I  
13 guess I'm not asking my question in a specific enough  
14 way. What physical means do you have under emergency  
15 conditions to maintain system pressure?

16 You were touching on that with cutting off  
17 certain customers or flow restrictors can be installed,  
18 or rotating outages. Are there any physical means like  
19 that under emergency conditions to constrain demand so  
20 that you can maintain essential supply, say, for fire  
21 protection or something?

22 MR. SCHUBERT: I would prefer not to.

23 CO-HEARING OFFICER WOLFF: Of course you would  
24 prefer not to. But if a major earthquake, something  
25 happens, I'm just trying to understand your physical

1 capacity.

2 MR. SCHUBERT: Probably there wouldn't be a  
3 lot we could do if we -- let's say we decide to isolate  
4 Seaside demand in order to keep the people, the  
5 customers, in Monterey in water. We'd have to go out  
6 and shut down valves and let Seaside kind of float by  
7 itself from the supplies there. That might be one way  
8 of doing it, is isolating certain sections of the  
9 distribution system.

10 But then that creates a whole host of other  
11 issues with are we going to start to see effects of  
12 suction pressure dropping off on some of our booster  
13 pumps in providing supply to the upper -- customers in  
14 the upper gradients.

15 It just kind of compounds itself. Then  
16 eventually we could end up with a distribution system  
17 with no water; and potentially a pipe breaks, and  
18 recharging the system may take quite a period of time.

19 CO-HEARING OFFICER WOLFF: I understand. So  
20 you have the capacity cut off certain sections of the  
21 system, though. How many blocks or units of isolatable  
22 parts of the system exist?

23 MR. SCHUBERT: I don't know off the top of my  
24 head. But again, before we could do any of that, we'd  
25 have to get permission from the Commission to actually

1 do that, and we'd have to request an emergency.

2 CO-HEARING OFFICER WOLFF: I understand. I'm  
3 trying to understand the physical limitations of the  
4 system. You're the engineering manager. You've  
5 testified about the engineering constraints of the  
6 system. I'm not talking institutional. I'm not  
7 talking anything but just physically what's possible  
8 within the system.

9 MR. SCHUBERT: There are certain points in the  
10 system that we can isolate. Like I said, Seaside or  
11 the Monterey area or even the Carmel Valley.

12 CO-HEARING OFFICER WOLFF: Are there dozens of  
13 subsectors, though, or, you know, a few, two or three?

14 MR. SCHUBERT: No, it would be quite complex.  
15 It would not just be going to one area and turning a  
16 couple of valves. It might require -- and I haven't  
17 looked at the distribution system in a while, but it  
18 would require multiple locations to isolate different  
19 parts of the system.

20 CO-HEARING OFFICER WOLFF: Has California  
21 American ever had to do anything like this? Has there  
22 ever been an earthquake, emergency or fire which  
23 required you to respond in an emergency fashion to  
24 maintain pressure?

25 MR. SCHUBERT: I think we've been fortunate.

1 There was a fire not too long ago that resulted in the  
2 tanks being drawn down. I'm talking the Forest Lake  
3 tanks being drawn down to almost nothing. But there  
4 was just sufficient, we had sufficient water in the  
5 mains to keep people in water and not drop below  
6 20 pounds per square inch standard.

7 CO-HEARING OFFICER WOLFF: All right.

8 MR. SCHUBERT: But I can't recall any.

9 CO-HEARING OFFICER WOLFF: Other than that,  
10 none you can recall.

11 MR. SCHUBERT: We had an earthquake back in I  
12 think it was 1989 that affected some of our systems,  
13 but we had portable generators on site for critical  
14 booster stations to ensure that people stayed in water.

15 CO-HEARING OFFICER WOLFF: Okay. And then the  
16 last few questions on system pressure, I think you said  
17 20 psi is the minimum that you need to maintain under  
18 State law; right?

19 MR. SCHUBERT: The California Department of  
20 Public Health, yes.

21 CO-HEARING OFFICER WOLFF: Right. And then  
22 you typically operate at what pressure?

23 MR. SCHUBERT: Typically we like to keep our  
24 pressure at 40 psi. That's what the Commission would  
25 like to see on a normal basis. But they allow you to

1 drop to 30 on a peak day situation.

2 CO-HEARING OFFICER WOLFF: And do you drop to  
3 30 on your peak days?

4 MR. SCHUBERT: I would say there are some  
5 parts of the distribution system depending on the  
6 elevation where it's close to 30 pounds, yes.

7 CO-HEARING OFFICER WOLFF: And on a regular  
8 diurnal cycle basis -- I know pressure varies -- do you  
9 have any sense of how far you drop on a normal day?

10 MR. SCHUBERT: I can't say without really  
11 looking at the data. I'm sure that -- you mentioned  
12 the word diurnal. I mean, that's where it goes --

13 CO-HEARING OFFICER WOLFF: Right.

14 MR. SCHUBERT: -- and you get an idea of  
15 what's going on in the system.

16 CO-HEARING OFFICER WOLFF: Okay. Well, here's  
17 where I'm leading to with that. Have you analyzed what  
18 would happen to leakage, how your leakage might change,  
19 if you operated the system at a lower system pressure?

20 MR. SCHUBERT: No, we haven't done that.

21 CO-HEARING OFFICER WOLFF: You haven't done an  
22 analysis of potential water savings in operating at a  
23 lower pressure?

24 MR. SCHUBERT: No.

25 CO-HEARING OFFICER WOLFF: Okay. Thank you

1 very much.

2 CO-HEARING OFFICER BAGGETT: Any other  
3 questions? If that's the case, do we have any  
4 redirect?

5 MR. RUBIN: Just give me a minute or two.

6 No redirect.

7 CO-HEARING OFFICER BAGGETT: Very good.

8 Exhibits?

9 MR. RUBIN: Move for admission into evidence  
10 Exhibit CAW-37A.

11 CO-HEARING OFFICER BAGGETT: There's no  
12 objection? Accepted.

13 (Exhibit CAW-37A was admitted into  
14 evidence.)

15 CO-HEARING OFFICER BAGGETT: That's it for Cal  
16 Am. PCL, there are four -- how many exhibits? Four or  
17 five.

18 MR. MINTON: Jonas Minton for PCL. We would  
19 move into evidence Exhibits PCL-5, PCL-6, PCL-7, and  
20 PCL-8.

21 CO-HEARING OFFICER BAGGETT: Any objection?

22 MR. RUBIN: Yeah, we would object -- excuse  
23 me.

24 CHIEF COUNSEL TAYLOR: I believe there was a  
25 PCL-4 introduced this morning.

1 MR. MINTON: Pardon?

2 CHIEF COUNSEL TAYLOR: I believe there was a  
3 PCL-4 introduced.

4 MR. MINTON: Oh, yes. Thank you.

5 MR. RUBIN: So is the request to admit 4  
6 through 8?

7 MR. MINTON: Yes.

8 MR. RUBIN: We would object to all documents,  
9 4 through 8, being admitted into evidence; improper  
10 foundation. No foundation was laid for the admission  
11 of them into evidence. I think this is clearly a  
12 circumstance where even the lax rules that the State  
13 Board has in terms of evidence do not warrant these  
14 documents to be admitted.

15 The witness was unable to testify to the truth  
16 of the documents. Nobody has. And so I don't think  
17 there is a basis for them to be admitted into evidence.

18 MR. MINTON: I would note in Phase 1 the  
19 hearing accepted into evidence as I recall CAW-8, a  
20 letter from John Rubin, CAW-9, a letter from Charles  
21 Lindsay, CAW-031B, an Administrative Law Judge decision  
22 before the PUC.

23 I assume that you will give them whatever  
24 weight you feel they deserve, and it would seem  
25 appropriate to have this in your evidentiary record to

1 give whatever weight you think they deserve.

2 MR. RUBIN: If there was some foundation  
3 provided, then arguably, yes. I think there is a clear  
4 distinction between the documents that we asked for  
5 admission. There were two cases of documents, some  
6 were requested through official notice, and some were  
7 through this proceeding.

8 I think in all cases the foundation was laid  
9 for them to be admitted as evidence. In terms of  
10 official notice, we made the argument, you granted it,  
11 so presumably we met the standards. None of those  
12 cases have existed here.

13 CO-HEARING OFFICER BAGGETT: There's two  
14 documents we can clearly take notice of from the  
15 Department of Water Resources. I guess we could, if we  
16 wanted to, PCL-5 and 4, we could request certified  
17 copies from DWR.

18 MR. RUBIN: Well, I'm sorry, 5 is --

19 CO-HEARING OFFICER BAGGETT: The letter from  
20 DWR, and the other is the Best Management Practices  
21 report filing form off the DWR website.

22 MR. RUBIN: Well, we don't know anything about  
23 the website. The document doesn't show when it might  
24 have been updated, if it's updated regularly. If you  
25 want to admit it, but it doesn't -- it's not for the

1 truth of whether the reports have been filed or not.

2 And so the question becomes is it relevant.

3 It's relevant -- I don't think there is any relevance  
4 for the document. It is a printout of a website --  
5 presumably it's a printout of a website; we don't know  
6 if it is. And we don't know what value, what probative  
7 value, if any, it provides.

8 So -- and in terms of the letter, again, it  
9 looks as though it's a document that was prepared by  
10 the Department of Water Resources. Nobody has  
11 testified to it. The argument has not been made that  
12 would warrant it being even officially noticed by this  
13 Board.

14 CO-HEARING OFFICER BAGGETT: We take Ed  
15 Anton's documents. That was in the State Board file, I  
16 guess, would be the difference.

17 MR. RUBIN: And we submitted a declaration to  
18 attest to the truth of the document as part of an  
19 official file that we were able to obtain from State  
20 Water Resources Control Board. None of that foundation  
21 has been laid here.

22 CO-HEARING OFFICER BAGGETT: Besides the two  
23 e-mails which were sent to the person who put them in,  
24 so I assume they could testify if we want to get them  
25 back up here that these were e-mails which were copied

1 and taken off the computer.

2 MR. RUBIN: I think the two e-mails raise  
3 probably a little bit of a different issue. Clearly  
4 the e-mail that has been marked as PCL Exhibit 6 raises  
5 significant issues.

6 We don't know if this person -- what level of  
7 work this person did to respond, if it's an official  
8 communication, whether there has been any additional  
9 communication between the time the first e-mail was  
10 sent and the second as reflected on this document.

11 There is just a lot of questions, and I don't  
12 think they fall within the type of documents that you  
13 can take official notice of, and clearly the foundation  
14 hasn't been laid to admit into evidence based upon the  
15 cross-examination.

16 CO-HEARING OFFICER BAGGETT: It would be hard  
17 to take official notice.

18 MR. MINTON: Mr. Baggett, with regard to  
19 PCL-6, it is offered as a communication I received.  
20 Whether or not there is subsequent communications from  
21 DWR, I did not indicate that there were. This was  
22 dated July 28th of this year. I am unaware of any  
23 additional ones. But irrespective of that issue, for  
24 what it is, it speaks.

25 MR. RUBIN: Yeah, but we don't know what it

1 is. That's the problem. Through cross-examination, we  
2 weren't able to determine if -- what level of research  
3 this person did, what level of involvement this person  
4 has.

5 All of those questions which are -- I think  
6 are necessary in order for you to give this document  
7 any weight, have not been elicited as part of the  
8 proceeding. So it's extremely prejudicial to let these  
9 types of documents, and even under the lax rules of  
10 evidence --

11 CO-HEARING OFFICER BAGGETT: Let's take it  
12 under submission. We'll rule before we break.

13 MR. MINTON: Thank you.

14 CO-HEARING OFFICER BAGGETT: So redirect, or  
15 rebuttal. Do you want to put your witnesses on now,  
16 and then we'll take a lunch break, which would allow --

17 MR. RUBIN: My preference would be for us to  
18 take a lunch and immediately afterwards to start  
19 rebuttal.

20 CO-HEARING OFFICER BAGGETT: Do you have any  
21 exhibits that you plan on using in rebuttal? It might  
22 be useful to provide those to the parties now if you  
23 have them.

24 MR. RUBIN: At this point, we don't. The only  
25 exhibits that we might provide are in response to

1 questions that we just received from the Hearing  
2 Officers and Hearing Team.

3 MR. SATO: I don't know how long Cal Am's  
4 rebuttal is going to be; but I would prefer to hear the  
5 rebuttal first, then take a lunch break so we have some  
6 sense of our ability to organize questions about the  
7 rebuttal testimony.

8 CO-HEARING OFFICER BAGGETT: Is there any  
9 other rebuttal besides Public Trust Alliance? I  
10 thought Alliance had rebuttal also.

11 MR. RUBIN: It would be helpful again -- and  
12 obviously, whatever your preference is, we'll address.  
13 But I think part of the reason why I wanted to wait  
14 until after lunch, it gives me an opportunity -- some  
15 of the questions that I prepared touched on issues that  
16 were questioned by some of the parties and the Hearing  
17 Officers.

18 CO-HEARING OFFICER BAGGETT: Let's take a  
19 12:30 lunch, we'll allow rebuttal testimony, then we'll  
20 take a break after the rebuttal testimony to allow  
21 parties to prepare.

22 Let's come back 12:35? Quick lunch?

23 MR. SILVER: May I just ask a question? After  
24 the cases are completed, are you anticipating that this  
25 afternoon we would have closing statements, or are

1 those going to be in the briefs?

2 CO-HEARING OFFICER BAGGETT: We will just do  
3 closing briefs.

4 MR. SILVER: Closing briefs.

5 CO-HEARING OFFICER BAGGETT: And we'll come  
6 back after lunch and give you an idea of what we are  
7 interested in, and you're free to brief however you  
8 want.

9 MR. RUBIN: Can we do this off the record?

10 CO-HEARING OFFICER BAGGETT: Off the record.

11 (Lunch recess)

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1                   A F T E R N O O N   S E S S I O N

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3                   CO-HEARING OFFICER BAGGETT:   Okay.  Let's go  
4 back on the record.  I think before we do Cal Am's  
5 rebuttal, I have a request from PCL.

6                   Mr. Minton?

7                   MR. MINTON:  Jonas Minton, Planning and  
8 Conservation League.  As to the admission of PCL-5, we  
9 do have with us here Mr. David Todd, the author of the  
10 letter in PCL-5.  And he has to be back to -- he's  
11 representing the Department of Water Resources Water  
12 Conservation Office in a meeting starting at 1:00.  And  
13 if it were possible out of order to examine him on the  
14 truth and accuracy of this copy very briefly, I would  
15 appreciate that opportunity.

16                  CO-HEARING OFFICER BAGGETT:  As a rebuttal  
17 witness?  Mr. Rubin?

18                  MR. RUBIN:  He would be called as a rebuttal  
19 witness to his own testimony.  I would object strongly  
20 to it.  It's extremely outside of the process set up  
21 for this proceeding.

22                  CO-HEARING OFFICER BAGGETT:  But he didn't  
23 testify.  That's the point.

24                  MR. RUBIN:  The question is he is calling a  
25 witness that was not identified in the Notice of

1 Intent. And you can do that as part of your rebuttal  
2 case, but you would be responding to a case-in-chief.  
3 And the case-in-chief that the Planning and  
4 Conservation League would be responding to is its own.

5 MR. MINTON: I would argue that the rebuttal  
6 is to testimony provided by Cal Am's witness as well as  
7 other witnesses on the extent of their water  
8 conservation measures and your ability to judge the  
9 weight of that evidence.

10 MR. RUBIN: And this is where it puts us at a  
11 distinct disadvantage and why it's so prejudicial. If  
12 the Planning and Conservation League wanted to approach  
13 this case as part of its case-in-chief, it would have  
14 to notice a witness as part of Notice of Intent. It  
15 would have to submit the documents.

16 We would be able to prepare a response, which  
17 we tried during lunch to kind of get the necessary  
18 information. Because of the 30-minute time frame it  
19 was very difficult to get anything that was definitive  
20 enough to provide as testimony, and it just highlights  
21 the kind of last-minute prejudice that this would  
22 cause.

23 So, again, I renew my objection to this.

24 CO-HEARING OFFICER BAGGETT: I understand. I  
25 am also trying to understand -- so you are going to

1 respond to a letter during the rebuttal, which you  
2 argue is not admissible to respond to?

3 MR. RUBIN: Well, we were trying to respond  
4 without knowing what your ruling would be to get the  
5 information, so if it were admitted, we might have a  
6 response. As it turns out, it doesn't sound like we  
7 have definitive information that we could provide.

8 If Mr. Minton wants to make a request when he  
9 files a closing brief asking the State Board to take  
10 official notice of it, then maybe that's the course.

11 But even an oral request at this point puts us  
12 at a disadvantage because we do need to understand, you  
13 know, where the document came from. He needs to  
14 provide a declaration showing that he's met the  
15 requirements under --

16 CO-HEARING OFFICER BAGGETT: What he is  
17 proposing is he has the author of the letter sitting  
18 here.

19 MR. RUBIN: But then again, what is the author  
20 going to testify to? Just the truth of the document,  
21 that the fact that the document was part of the record  
22 of the Department of Water Resources? And then it's  
23 going to be admitted into evidence for the truth of the  
24 matter asserted? And then if it is, again, we're put  
25 at extreme disadvantage because we can't cross-examine

1 the witness as we properly should if this document was  
2 served on the parties ahead of time.

3 MR. MINTON: I will note that this came up in  
4 the cross-examination of Cal Am's witness. Without  
5 knowing at the time we had to all collectively file our  
6 list of witnesses what the testimony of Cal Am would  
7 be, and before hearing their direct testimony today, it  
8 would have been impossible to envision how we would  
9 exactly respond.

10 MR. RUBIN: I don't believe there is a  
11 reference in any of the written testimony California  
12 American Water submitted --

13 CO-HEARING OFFICER BAGGETT: It was a  
14 legitimate question on cross.

15 MR. RUBIN: Just simply the broad rules of  
16 relevance, any relevant question may be asked; but it's  
17 not in direct response to a statement that California  
18 American Water made.

19 CO-HEARING OFFICER BAGGETT: The only -- the  
20 purpose, I assume, of this document is to simply  
21 confirm that in fact an Urban Water Management Plan  
22 report was not filed by whatever date it said here.  
23 That's all. I assume that is --

24 MR. MINTON: Correct. And the entirety of the  
25 questioning of this witness would be this is a true and

1 correct copy of that which was sent to Cal Am, and  
2 nothing beyond that.

3 MR. RUBIN: And again, this kind of gets to  
4 the point of official notice, which is really what is  
5 happening here. It's laying a foundation for official  
6 notice, so that what ultimately the Planning and  
7 Conservation League can do is rely on a January 22nd,  
8 2007 statement that was made.

9 Whether it's true or not today has not been  
10 established. And so again, I would argue the proper  
11 venue here is for the Planning and Conservation League  
12 to make an official request for official notice,  
13 formally as part of a written submittal, at the time  
14 they're either going to either rely on this document as  
15 part of their closing brief or not.

16 CO-HEARING OFFICER BAGGETT: It seems to be  
17 all four of these documents are the same --

18 MR. RUBIN: And I would like to point out --

19 CO-HEARING OFFICER BAGGETT: -- document, take  
20 official notice -- I was ready to rule these two I  
21 think we can take official notice. I think the proper  
22 mechanism, as Mr. Rubin described, if you can just file  
23 it in your closing brief, asking the Board to take  
24 official notice of the website dated whatever from --

25 MR. RUBIN: Just a point of clarification

1 before you rule, Hearing Officer Baggett. I believe  
2 PCL Exhibit 4 is not from a State agency website. It's  
3 the California Urban Water Conservation Council.

4 And so maybe Mr. Minton could establish the  
5 appropriate requirements in order for the State Board  
6 to take official notice or not.

7 But again, it gets to my point at this time if  
8 he wants these in, I think he hasn't laid the  
9 foundation.

10 CO-HEARING OFFICER BAGGETT: So the Board  
11 would consider that if you file a motion for these two.

12 The two e-mails, we will -- since they were  
13 received by Mr. Minton, we'll allow those two in; I  
14 don't know that they -- the names' on them, we could  
15 get them back here to testify. I don't think it's  
16 necessary.

17 And the fifth document is the PUC Commission.  
18 That's going to be a little tougher; it's not an  
19 official document of the PUC. It was a brief filed by,  
20 I guess on behalf of Cal Am. I don't know how we --

21 MR. MINTON: Their attorneys filed that, and I  
22 was served and provided you a copy of that, and the  
23 other parties today, a copy of that service.

24 I believe Mr. Laredo also is listed, and I  
25 could perhaps call him and ask him if he has also

1 received this, but I don't want to burden this hearing.

2 MR. RUBIN: Again, I object to the document.

3 And I still take exception to PCL Exhibit 6.

4 The fact that Mr. Minton may or may not have accepted  
5 the document is not relevant in terms of an evidentiary  
6 determination where you're trying to admit this based  
7 upon cross-examination of Mr. Schubert, a witness for  
8 California American Water.

9 And again, I don't believe a foundation has  
10 been established for the admission of PCL Exhibit 7.  
11 The witness clearly made it -- you know, testified to  
12 his lack of knowledge about the document, specific  
13 knowledge.

14 CO-HEARING OFFICER BAGGETT: Okay.

15 To recap, PCL-4 and 5, we will allow you to  
16 file a motion to include those under official notice.  
17 Probably, DWR, we could do that.

18 We'll rule on 7, continue to contemplate that  
19 one, take that under submission.

20 MR. MINTON: And what of 6?

21 CO-HEARING OFFICER BAGGETT: And the other two  
22 e-mails, I think they go with -- I'll rule on those  
23 later.

24 MR. MINTON: Thank you.

25 CO-HEARING OFFICER BAGGETT: Okay.

1           MR. RUBIN: Good afternoon, John Rubin for  
2 California American Water.

3           For our rebuttal case we are going to have  
4 four witnesses, three that are here currently before  
5 you, Mr. Schubert, Mr. Bunosky and Mr. Stephenson. We  
6 are also calling Mr. Darby Fuerst. And I think it's  
7 appropriate at this time if Mr. Fuerst come forward to  
8 the Hearing Officers.

9           (Interruption by the reporter)

10          MR. RUBIN: Hearing Officers, I do have a  
11 procedural question here.

12          The Monterey Peninsula Water Management  
13 District has been kind enough to allow Mr. Schubert to  
14 appear as part of the rebuttal case. I have just a few  
15 questions to direct to him on a specific issue, so I'm  
16 hoping to ask him those questions, direct my remainder  
17 of questions to the panel of staff from the California  
18 American Water Company.

19          And because of that we're hoping that if there  
20 is cross-examination of these witnesses, anyone who is  
21 cross-examining the witnesses would direct their  
22 questions to Mr. Fuerst if they relate to only those  
23 questions that I'm asking him. And for the remainder  
24 of questions that I'm asking the rest of the panel,  
25 that the cross-examination be directed to the remainder

1 of the panel.

2 DARBY FUERST

3 Called by CALIFORNIA AMERICAN WATER COMPANY

4 DIRECT EXAMINATION BY MR. RUBIN

5 MR. RUBIN: Let me start, Mr. Fuerst, with  
6 you. Again, just a few questions: Mr. Fuerst, are you  
7 familiar with the Fish Rescue Program that exists for  
8 the Carmel River?

9 MR. FUERST: Yes, I am.

10 MR. RUBIN: Do you know what are the current  
11 fish rescue counts for 2008?

12 MR. FUERST: Yes, I do.

13 MR. RUBIN: What are they?

14 MR. FUERST: There are two aspects to that.  
15 The water -- Monterey Peninsula Water Management  
16 District through its fish rescue program has rescued up  
17 through this week between 70- and 74,000 steelhead.  
18 And in addition to that, the Carmel River Steelhead  
19 Association through their efforts have rescued an  
20 additional 20- to 25,000 steelhead this year.

21 MR. RUBIN: And do you know what the projected  
22 fish rescues are for 2008?

23 MR. FUERST: It's projected that it will be  
24 over 100,000 steelhead this year.

25 MR. RUBIN: And the projection of 100,000, is

1 that for the Monterey Peninsula Water Management  
2 District's rescue program only?

3 MR. FUERST: No. That would be the total.  
4 And the projection is pretty much what has been rescued  
5 to date in that the river has reached a stable point,  
6 and we hope that there will be no further need to  
7 rescue.

8 MR. RUBIN: Mr. First, how did the fish rescue  
9 counts for 2008 compare to prior years?

10 MR. FUERST: The previous record number of  
11 fish rescue was in 2003, and there were 55,000  
12 steelhead rescued that year, 40,000 by the District and  
13 15,000 by the Carmel River Steelhead Association.

14 MR. RUBIN: Do you attribute that increase in  
15 fish rescues to an increased amount of fish?

16 MR. FUERST: Yes.

17 MR. RUBIN: Thank you. I have no further  
18 questions for you.

19 F. MARK SCHUBERT

20 TOM BUNOSKY

21 DAVID STEPHENSON

22 Called by CALIFORNIA AMERICAN WATER COMPANY

23 DIRECT EXAMINATION BY MR. RUBIN

24 MR. RUBIN: Mr. Schubert, Mr. Bunosky and Mr.  
25 Stephenson, I have questions that I've prepared and I

1 will be asking the panel and leave it to you to provide  
2 a response, and whoever is best capable of responding I  
3 would assume will provide the response.

4 Can you please describe the type of activities  
5 that generate operating expenditures for California  
6 American Water's Monterey division?

7 MR. BUNOSKY: The operating expenses of the  
8 Monterey division entails all of our costs for power,  
9 chemicals, labor, miscellaneous expenses, maintenance,  
10 everything that it costs to operate a water system on  
11 the Peninsula.

12 MR. RUBIN: So one of the operating  
13 expenditures for California American Water's Monterey  
14 division is the cost to pump water from the subsurface  
15 to the surface within the Carmel River Basin?

16 MR. STEPHENSON: Yes.

17 MR. RUBIN: Does California American Water  
18 earn a return on operating expenditures?

19 MR. STEPHENSON: No, they do not.

20 MR. RUBIN: Now, California American Water has  
21 two principal sources of water that it can supply to  
22 customers on the Monterey Peninsula; is that correct?

23 MR. BUNOSKY: Yes.

24 MR. RUBIN: And those two sources we've been  
25 talking about as part of this proceeding, and they're

1 from the Carmel River or the Seaside Basin?

2 MR. BUNOSKY: Correct.

3 MR. RUBIN: Does California American Water  
4 base its decision on the source from which it extracts  
5 water, either from the Carmel River Basin or the  
6 Seaside Basin, on the level of operating expenditures  
7 of the rate of return for its investors?

8 MR. BUNOSKY: No.

9 MR. RUBIN: If operating expenditures or rate  
10 of return is not determinative of the source from which  
11 California American Water will extract water, on what  
12 does California American Water base its decision?

13 MR. SATO: Before you answer, I'm going to  
14 object to this line of questioning as rebuttal  
15 testimony.

16 I don't know what Cal American is attempting  
17 to rebut with this line of questioning. Seems to me  
18 that that was something that could have been part of  
19 their case-in-chief in Phase 2, and bringing it up now,  
20 especially in this format with no written testimony, is  
21 very difficult.

22 MR. RUBIN: Well, we obviously prepared our  
23 case-in-chief based upon what we believed we either  
24 needed to establish or thought was relevant, and  
25 because of that we limited our testimony. I think that

1 this is extremely relevant. I think it's responsive to  
2 either direct testimony or suggestions by the parties  
3 that were made through their cross-examination.

4 CO-HEARING OFFICER WOLFF: What are you  
5 rebutting?

6 MR. RUBIN: There was testimony which  
7 suggested -- or excuse me. There was either testimony  
8 or cross-examination that suggested that the motive --  
9 that there's a motivation by the company to extract  
10 Carmel River water because it's cheap water and somehow  
11 the company is making more money by doing so.

12 MR. SATO: I'm not aware of that line of  
13 questioning in this phase.

14 CO-HEARING OFFICER WOLFF: I'm also not aware  
15 of it.

16 MR. RUBIN: But that is an issue that we heard  
17 through cross-examination questions.

18 If there is a stipulation on some of these  
19 facts, that's fine. But what we're trying to establish  
20 is how California American Water operates, how it  
21 determines the amount of water that it's using from its  
22 sources that are available.

23 And again, there was a suggestion that the  
24 only reason California American Water is pumping water  
25 from the Carmel River is because that's best for its

1 investors, and what we're trying to establish is facts  
2 that address that issue.

3 CO-HEARING OFFICER BAGGETT: It's a close  
4 call. Mr. Jackson did have a line of questioning that  
5 did sort of dance around this. I don't know if it was  
6 as direct as -- they clearly did make reference to --

7 MR. SATO: But I don't believe Mr. Jackson's  
8 questions were directed to anybody at Cal American.

9 MR. RUBIN: This places us at an extreme  
10 disadvantage, where you have a person that comes up  
11 here, you have -- let me start -- you have a structure  
12 here where the State Board allows a number of  
13 participants to ask questions, make suggestions through  
14 their questioning. And underlying it was clearly an  
15 issue here.

16 CO-HEARING OFFICER BAGGETT: I would overrule.  
17 Continue.

18 MR. RUBIN: My question to you was: If  
19 operating expenditures or rate of return is not  
20 determinative of the source from which California  
21 American Water will extract water, on what basis does  
22 California American Water make a decision?

23 MR. BUNOSKY: California American Water makes  
24 a decision based upon the demands in the system from  
25 the customers and how much water is needed to supply

1 the customers' demands for water, and based upon the  
2 regulatory requirements of the Seaside Basin and Carmel  
3 River, balancing those two as best we can to meet the  
4 demands of the customers.

5 MR. RUBIN: Is part of the decision based upon  
6 maximizing the operations of the distribution system?

7 MR. SCHUBERT: Yes.

8 MR. RUBIN: And how does California American  
9 Water determine demand?

10 MR. SCHUBERT: Demand is determined by what  
11 the customers want as far as water. That's solely what  
12 it is.

13 MR. RUBIN: And is demand determined on an  
14 annual basis?

15 MR. SCHUBERT: Actually the projected demand  
16 is determined on a quarterly basis working closely with  
17 the Monterey Peninsula Water Management District; and  
18 as we move into spring and summer months, those  
19 discussions actually go to, I think, even monthly and  
20 weekly as needed.

21 MR. RUBIN: So is it correct to say that  
22 California American Water must pump water into its  
23 Monterey distribution system to maintain the system's  
24 ability to function as designed?

25 MR. SCHUBERT: Yes.

1           MR. RUBIN: Could the Monterey division's  
2 distribution system be compromised if California  
3 American Water were limited by the amount of water it  
4 could extract from the Carmel River?

5           MR. SCHUBERT: Yes.

6           MR. SATO: I'm sorry. I'm going to have to  
7 object again. This is exactly the testimony that Mr.  
8 Schubert gave in the Phase 2 of the Cal Am proceeding,  
9 so I don't know why this is now permitted as a  
10 rebuttal.

11          MR. RUBIN: I'll move on.

12          CO-HEARING OFFICER BAGGETT: Okay.

13          MR. RUBIN: Does California American Water  
14 undertake actions that are intended to reduce demand?

15          MR. BUNOSKY: Yes, we do.

16          MR. RUBIN: And can you explain generally the  
17 types of action that are undertaken to reduce demand?

18          MR. BUNOSKY: We have a multitude of  
19 conservation programs as has been heard throughout  
20 these proceedings in regard to customer rebates,  
21 incentives, advertising, encouragement to customers, in  
22 regard to conservation, as well as rate design that  
23 Mr. Stephenson can explain in more detail in regard to  
24 those incentives for conservation as well.

25          MR. RUBIN: Mr. Stephenson, can you explain

1 generally how rate structures are set to encourage  
2 conservation?

3 MR. STEPHENSON: Sure. In Monterey we have  
4 had a five -- a residential five-tier rate design that  
5 set rates from right around \$3 per unit up to over \$13  
6 per unit for customers that use far in excess of what  
7 we have determined their allotment to be. Their  
8 allotment is based on the number of people, lot size,  
9 whether they have large animals and other special  
10 needs.

11 And then the commercial allotments are set  
12 based on historic averages that that type of particular  
13 customer would need or surveys done for the  
14 nonresidential.

15 MR. RUBIN: To implement the types of programs  
16 that you just discussed, both in terms of rates and  
17 other actions, does California American Water need to,  
18 or has California American Water obtained approvals  
19 from the California Public Utilities Commission?

20 MR. STEPHENSON: Anything to do with rate  
21 design would have to be approved by the California  
22 Public Utilities Commission, yes.

23 MR. RUBIN: And Mr. Bunosky, do some of the, I  
24 guess you call it outreach-type activities that you  
25 described, do you need PUC approval?

1 MR. BUNOSKY: Yes, we do.

2 MR. RUBIN: Can California American Water  
3 guarantee a particular level of water savings will  
4 result from a conservation measure or set of  
5 conservation measures?

6 MR. BUNOSKY: No.

7 MR. RUBIN: I believe I'll ask Mr. Schubert  
8 this, but again, if any of the other witnesses for  
9 California American Water are more equipped to answer  
10 the question, feel free.

11 Are you familiar with Exhibit 19-A to Monterey  
12 Peninsula Water Management District Exhibit DF-11?

13 MR. SCHUBERT: Yes.

14 MR. RUBIN: Maybe we could have that put up  
15 just so that people are familiar with it. It's been  
16 discussed quite a bit here in this proceeding.

17 Mr. Schubert, can you explain what is  
18 presented just generally in Exhibit 19-A to Monterey  
19 Peninsula Water Management District DF-11?

20 MR. SCHUBERT: That exhibit presents a summary  
21 table of nine restoration projects related to the  
22 steelhead. It was developed, I believe, as part of a  
23 workshop hosted by the Monterey Peninsula Water  
24 Management District about three years ago.

25 Those nine projects are ranked by the District

1 as far as priority. They're ranked also by the  
2 National Marine Fisheries Services as far as a  
3 priority.

4 And as you can see, there is a brief  
5 description of the project, and then the last couple  
6 columns show the estimated costs, either a total cost  
7 or a range of costs, as well the time frame for that  
8 project to be implemented.

9 MR. RUBIN: You mentioned these were developed  
10 at a workshop. Do you know long of a workshop?

11 MR. SCHUBERT: My understanding, it was about  
12 a day and a half workshop.

13 MR. RUBIN: And do you have any concerns with  
14 any of the information presented on Exhibit 19-A to  
15 Monterey Peninsula Water Management District Exhibit  
16 DF-11?

17 MR. SCHUBERT: I would have two concerns. The  
18 first one would be with the cost estimates. I'm not  
19 aware of any study that would be in place that would  
20 support any of the cost estimates that have been  
21 developed to date. From my experience in presenting  
22 capital projects before the California Public Utilities  
23 Commission, they like to see very detailed estimates,  
24 and I have not seen any detailed estimates.

25 And further, since that workshop was I guess

1 three years ago, that would mean these cost estimates  
2 are going to be out of date.

3 The second issue has to do with the time frame  
4 that's listed. I think the District had some testimony  
5 yesterday illustrating concern with how long it takes  
6 to get permits dealing with environmental issues as  
7 well as any CEQA compliance.

8 So those one-to-three-year time frame, for  
9 example on number one of the Lagoon Reverse Osmosis  
10 Water Project, that could be more. You know, it's  
11 really hard to say. But it's a concern I would have  
12 just in taking the table at face value, there might be  
13 a lot more involved.

14 MR. RUBIN: Thank you. Turning to a different  
15 subject. Appreciate you putting that on the overhead.

16 What is the capacity of the Coastal Water  
17 Project, roughly?

18 MR. SCHUBERT: 11,730 acre feet.

19 MR. RUBIN: And do you know what type of  
20 approvals are required in order for California American  
21 Water to fully implement the Coastal Water Project?

22 MR. SCHUBERT: Well, we expect to have to  
23 obtain permits from various agencies, almost 35 at last  
24 count, and it could go -- you're talking about anywhere  
25 from US Army Corps of Engineers to NOAA Fisheries, Fish

1 and Game, us Fish and Wildlife Service, I'm just  
2 scratching the service, never mind the regional.

3 CO-HEARING OFFICER BAGGETT: Objection?

4 MR. SATO: I guess I'd have to renew my  
5 objection that this was not testimony that's properly  
6 part of a rebuttal case.

7 In fact, I would suggest that the hearing  
8 officers ask Mr. Rubin to make an offer of proof as to  
9 whatever testimony he's seeking to elicit so we know  
10 for sure whether or not we're going to have to go  
11 through and listen to stuff that should already have  
12 been part of the case-in-chief or whether he truly is  
13 going to present information that is properly the  
14 subject of a rebuttal session.

15 CO-HEARING OFFICER BAGGETT: I think this  
16 current line was clearly, some of it is in the  
17 case-in-chief, it's specific information that I recall  
18 a number of us up here asked for specifically. Time  
19 line and the prospect of the 2015. So to that part  
20 what -- maybe you could give us --

21 MR. RUBIN: Well, again, I can go through each  
22 question and raise it, and we can deal with it on a  
23 case-by-case basis. But clearly there was a number of  
24 issues that were presented by parties as part of their  
25 case-in-chief.

1           The way this is structured is we all have to  
2 submit our case-in-chief at the same time. I can't  
3 anticipate what every -- all of the various 18 other  
4 participants in this process are going to present.  
5 Ideally, it would have been structured a little bit  
6 differently, and we would have been able to address  
7 issues on a more -- on a -- in a different pattern.

8           But clearly there were parties besides  
9 California American Water that as part of their  
10 case-in-chief addressed timing issues, approval issues.

11           I think Mr. Sato spent quite a bit of time  
12 yesterday questioning the schedule, questioning the  
13 Monterey Peninsula Water Management District's  
14 witnesses on the schedule for the Coastal Water  
15 Project.

16           This morning we heard questions asking about  
17 whether somebody can guarantee a time frame, and that's  
18 where a lot of these questions are trying to elicit  
19 additional --

20           CO-HEARING OFFICER BAGGETT: I'll allow this  
21 line of questioning. I think it's something that a  
22 number of us specifically asked for, so I'll overrule  
23 on that.

24           But I think you just made Mr. -- the PCL's  
25 point also for him, so I think he couldn't anticipate,

1 which as I recall was their argument.

2 MR. RUBIN: The difference there is that the  
3 issues regarding an Urban Water Management Plan were  
4 raised by them. And so they weren't -- I raised an  
5 objection to how they presented it, and they want to  
6 correct that through rebuttal. That's just a circular  
7 kind of position.

8 CO-HEARING OFFICER BAGGETT: I understand.  
9 Continue.

10 MR. SATO: I'm sorry, Mr. Hearing Officer, I  
11 mean, I would request, though, that Cal Am be required  
12 to make an offer of proof to what subjects he intends  
13 to cover.

14 I mean, if he is going to stay -- I sympathize  
15 with Mr. Rubin's concerns about having to deal with  
16 this particular kind of process, but I still think that  
17 he can tell us what areas that he intends to cover with  
18 this rebuttal so we can decide whether or not we need  
19 to go forward.

20 CO-HEARING OFFICER BAGGETT: That's fair.

21 MR. RUBIN: My current line of questions, I  
22 have several questions right now that will deal with  
23 the Coastal Water Project, both in terms of permitting  
24 and to some degree rate structure that might be in  
25 place. Before I get to my next set, I guess I'll stop

1 and I'll explain it and we'll --

2 CO-HEARING OFFICER BAGGETT: That would  
3 be helpful.

4 MR. RUBIN: So I believe, Mr. Schubert, you  
5 were just answering a question on the types of approval  
6 that may be required. As a followup to that, before  
7 California American Water obtains approvals from the  
8 agencies that you articulated, must those agencies  
9 comply with legal requirements?

10 MR. SCHUBERT: Yes.

11 MR. RUBIN: One of those legal requirements is  
12 the California Environmental Quality Act?

13 MR. SCHUBERT: That's correct.

14 MR. RUBIN: Do the legal requirements  
15 generally provide an opportunity for public input?

16 MR. SCHUBERT: Yes, they do.

17 MR. RUBIN: To implement the Coastal Water  
18 Project, must California American Water obtain voter  
19 approval?

20 MR. SCHUBERT: Voter approval? No.

21 MR. RUBIN: At one point in time, did  
22 California American Water maintain a schedule for the  
23 Coastal Water Project that had the construction of a  
24 desalination plant completed by 2008?

25 MR. SCHUBERT: Yes, I believe they did.

1           MR. RUBIN: What is the current projected date  
2 for completion of the desalination plant that's part of  
3 the Coastal Water Project?

4           MR. SCHUBERT: 2015.

5           MR. RUBIN: Has the schedule -- excuse me.  
6 Has the scheduled completion date changed because of  
7 projected delays in California American Water applying  
8 for needed approvals for permits?

9           MR. SCHUBERT: No, it's all been tied up with  
10 the EIR process.

11           MR. RUBIN: Mr. Schubert, is the type of delay  
12 that you just described related to the environmental  
13 review process part of the reason why you testified  
14 earlier today that California American Water cannot  
15 guarantee the Coastal Water Project construction to be  
16 complete by a date certain?

17           MR. SCHUBERT: Yes.

18           MR. RUBIN: Is another reason because of the  
19 potential litigation that might be filed after the  
20 Environmental Impact Report is certified?

21           MR. SCHUBERT: Yes, that's correct.

22           MR. RUBIN: Mr. Stephenson, I have some  
23 questions for you, I believe. Has California American  
24 Water expended funds related to the design,  
25 environmental review, and approvals for the Coastal

1 Water Project?

2 MR. STEPHENSON: Yes, they have.

3 MR. RUBIN: Do you recall if you submitted  
4 testimony previously in this proceeding regarding those  
5 types of expenditures?

6 MR. STEPHENSON: Yes, I did.

7 MR. RUBIN: Is there a rate structure in place  
8 that allows California American Water to recover  
9 expenditures by California American Water related to  
10 the Coastal Water Project?

11 MR. STEPHENSON: Yes, we are currently  
12 recovering what we consider the preconstruction costs.

13 MR. RUBIN: And you are able to recover those  
14 because of approval obtained by the California Public  
15 Utilities Commission?

16 MR. STEPHENSON: Yes.

17 MR. RUBIN: Has the California Public  
18 Utilities Commission approved a rate structure that  
19 allows California American Water to recover costs for  
20 constructing the Coastal Water Project?

21 MR. STEPHENSON: In the decision that was  
22 issued in December of 2006, they made two rulings on  
23 there. One was for the surcharge that is in place now  
24 for reconstruction costs. The other was that a  
25 surcharge could go in place after the Certificate of

1 Public Convenience and Necessity was approved, which  
2 would allow for customers to contribute to the project  
3 cost.

4 MR. RUBIN: And project cost, is that  
5 construction?

6 MR. STEPHENSON: Yes, it is.

7 MR. RUBIN: Does the PUC -- excuse me. Does  
8 the California Public Utilities Commission have to take  
9 any further action aside from the CP --

10 MR. STEPHENSON: CPCN?

11 MR. RUBIN: CPCN, in order for the rates to  
12 take effect for construction of the Coastal Water  
13 Project?

14 MR. STEPHENSON: I do not know. To the best  
15 of my knowledge, once the CPCN is granted, the  
16 surcharge would be in place at that point.

17 MR. RUBIN: From your testimony today, is it  
18 correct to state that California American Water's  
19 customers have been paying for development of the  
20 Coastal Water Project?

21 MR. STEPHENSON: They have been paying for the  
22 preconstruction costs since January of 2007.

23 MR. RUBIN: And they've been paying since  
24 2007?

25 MR. STEPHENSON: Since January 2007, the

1 surcharge has been in place for recovery of the  
2 preconstruction costs.

3 MR. RUBIN: And when did California American  
4 Water start incurring the preconstruction costs?

5 MR. STEPHENSON: I believe it was in the end  
6 of 2003.

7 MR. RUBIN: So the customers of California  
8 American Water are paying for costs that California  
9 American Water began incurring in 2003 but they started  
10 paying in 2007?

11 MR. STEPHENSON: That is correct.

12 MR. RUBIN: I have the next set of questions  
13 that are going to be addressing testimony that  
14 Mr. Stretars presented, and it's focused primarily on  
15 testimony regarding Stage 3 conservation.

16 It appears that Mr. Stretars' testimony, I  
17 believe it's PT49 if I recall correctly, pages 4 and 5,  
18 roughly.

19 With that offer of proof, can I continue?

20 CO-HEARING OFFICER BAGGETT: No objection.

21 MR. RUBIN: Thank you. I'm not sure exactly  
22 who to address this to. Maybe Mr. Stephenson.

23 Mr. Stephenson, are you familiar with the  
24 testimony Mr. Stretars provided for the second phase of  
25 this proceeding?

1 MR. STEPHENSON: No, I'm not.

2 MR. RUBIN: Do you recall if Mr. Stretars  
3 suggested that the Monterey Peninsula Water Management  
4 District Stage 3 conservation can be implemented to  
5 achieve a 15 percent reduction in California American  
6 Water's annual diversion from the Carmel River?

7 MR. STEPHENSON: Since I'm unfamiliar with the  
8 testimony, I don't know.

9 MR. RUBIN: Is there anyone else on the panel  
10 who is?

11 MR. BUNOSKY: Yes, I believe I remember that.

12 MR. RUBIN: Can you explain what is required  
13 under Monterey Peninsula Water Management District's  
14 Stage 3 water conservation?

15 MR. STEPHENSON: Presently, in terms of their  
16 Stage 3, which is equivalent to our rule 14.1, Stage 3,  
17 we would implement emergency rates that would go into  
18 effect. And we would have to have a plan -- propose a  
19 plan to the management district on how to reduce our  
20 lost water, our unaccounted-for water.

21 MR. RUBIN: And what type of actions might  
22 California American Water include in a plan to reduce  
23 unaccounted-for water prepared in response to Stage 3  
24 water conservation imposed by the Monterey Peninsula  
25 Water Management District?

1           MR. BUNOSKY: On a short-term basis, you could  
2 implement various measures. As an example, no street  
3 flushing, municipal use, no fire department testing and  
4 drills of the fire hydrants for water use for their  
5 training exercises. Sewer flushings could be halted  
6 and reduced.

7           All -- a multitude of those kind of unmetered  
8 uses could be curtailed in the short term to address  
9 that shortfall of water.

10          MR. RUBIN: Do you think those actions could  
11 be sustained on a long-term basis?

12          MR. BUNOSKY: No.

13          MR. RUBIN: Can California American Water  
14 guarantee a particular level of water savings if it  
15 were to operate under a Stage 3 water conservation?

16          MR. STEPHENSON: I don't believe so, no.

17          MR. RUBIN: Mr. Stephenson, while you're  
18 answering questions, can you explain the rate structure  
19 California American Water implements under Stage 3  
20 water conservation?

21          MR. STEPHENSON: The present Stage 3 rates  
22 increases the upper blocks for the customers, basically  
23 for the residential blocks 4 and 5 would be doubled,  
24 and the second block for the nonresidential customers  
25 would be doubled.

1           MR. RUBIN: And what happens to the additional  
2 revenue, if any, that is recovered because of the  
3 increased rates under Stage 3 water conservation?

4           MR. STEPHENSON: All of the revenues that are  
5 collected by the increased rates from what we call  
6 emergency conservation rates are held in a deferred  
7 account to be later refunded to customers in some  
8 manner.

9           MR. RUBIN: So Stage 3 water conservation, the  
10 rate structure -- excuse me. Let me rephrase my  
11 question.

12           The rate structure under Stage 3 water  
13 conservation, is it correct to characterize it as a  
14 temporary means to encourage conservation?

15           MR. STEPHENSON: Yes, it is.

16           MR. RUBIN: Do you know if it could be used to  
17 encourage conservation on a long-term basis?

18           MR. STEPHENSON: It was basically put in place  
19 for emergencies when we needed to get, to reduce usage  
20 at that point in time. I'm not sure what the reaction  
21 would be in the long term.

22           MR. RUBIN: And in terms of reducing usage, do  
23 you know to what level Stage 3 conservation is intended  
24 to reduce usage to?

25           MR. STEPHENSON: Again, it was a temporary

1 measure to just reduce the usage enough so that we  
2 would not exceed whatever legal limits were in place.  
3 And we're not sure -- it's hard to say how much it  
4 would reduce it. We know that it was in place one time  
5 and did bring down the consumption some.

6 MR. RUBIN: The legal limits that you're  
7 referring to, is that 11,285?

8 MR. STEPHENSON: That is what is in our  
9 current rule, yes, the 11,285 from the Carmel River.

10 MR. RUBIN: And has the California Public  
11 Utilities Commission approved the rate structure for  
12 Stage 3 conservation?

13 MR. STEPHENSON: Yes, they have.

14 MR. RUBIN: Turning to another set of  
15 questions that are intended to respond to questions  
16 that were asked by the -- I believe it's the Carmel  
17 River Steelhead Association, Mr. Jackson, that related  
18 to desalination plants and questioned witnesses about  
19 the timing to bring on line desalination plants that  
20 might be lesser size than the Coastal Water Project.

21 CO-HEARING OFFICER BAGGETT: Continue.

22 MR. RUBIN: Can any of the panel for  
23 California American Water explain why California  
24 American Water has not pursued a desalination plant  
25 smaller than the one included as part of the Coastal

1 Water Project, if they haven't pursued it?

2 MR. SCHUBERT: If we pursued a smaller  
3 project, we'd still be looking at 10, 20 projects. And  
4 the time frame would still end up being roughly the  
5 same.

6 And an example that I think we heard, the City  
7 of Sand City and their small 300-acre feet plant took  
8 almost seven years from inception to going on line. So  
9 it really wouldn't serve us to have nine or ten small  
10 plants when one big plant will take care of the  
11 problem.

12 MR. RUBIN: Is it possible that if California  
13 American Water were pursuing, let's say, ten smaller  
14 desalination plants it might take longer than the seven  
15 years it took Sand City to implement a desalination  
16 plant?

17 MR. SCHUBERT: It's possible.

18 MR. RUBIN: I would imagine the pursuit of ten  
19 desalination plants would require a significant amount  
20 of resources?

21 MR. SCHUBERT: Yes.

22 MR. RUBIN: Is it possible that the pursuit of  
23 ten smaller desalination plants would require more  
24 resources than California American Water's currently  
25 dedicating to the Coastal Water Project?

1 MR. SCHUBERT: Yes.

2 MR. RUBIN: I'm going to now turn to another  
3 set of questions dealing with the authority of  
4 California American Water and its ability to address  
5 different water uses. Again, this comes from a line of  
6 questions, hard to describe, but it comes out of  
7 questions asked of the municipalities as well as some  
8 of the testimony that Mr. Stretars presented on behalf  
9 of the Prosecution Team.

10 MR. SATO: I object to this question. I'm  
11 sorry. From Mr. Rubin's description, I was really not  
12 sure what he was trying to cover, so --

13 MR. RUBIN: Let me try and do a better job  
14 describing it. I apologize, Mr. Sato, for not being  
15 more clear.

16 But the way we heard Mr. Stretars' testimony  
17 as well as some of the questions that were asked the  
18 municipalities, there was testimony or a suggestion  
19 through questioning that California American Water had  
20 the ability to direct water to a particular water user  
21 or segment of the population, and I'd like to ask some  
22 questions that try to address that issue.

23 MR. SATO: I don't recall those kinds of  
24 questions being directed, but I think --

25 CO-HEARING OFFICER BAGGETT: I'm particularly

1 interested in commercial versus residential; and if  
2 that's where you're headed, I think that information  
3 would be very helpful.

4 MR. SATO: All right. I didn't understand  
5 that's what Mr. Rubin was trying for.

6 MR. RUBIN: That's part of what the questions  
7 are. There are not a lot of questions on this topic,  
8 but that is one of them. And obviously, Mr. Sato, I'll  
9 give him an opportunity to object to individual  
10 questions if he so desires.

11 CO-HEARING OFFICER BAGGETT: Let's go.

12 MR. RUBIN: Does California American Water  
13 have the authority to regulate land use?

14 MR. STEPHENSON: No, they do not.

15 MR. RUBIN: Can California American Water  
16 curtail use by a particular segment of the population,  
17 say curtail exclusively commercial use?

18 MR. STEPHENSON: Not in PUC or California  
19 Public Utilities Commission regulations, no.

20 MR. RUBIN: From an operational standpoint, is  
21 it possible for California American Water to curtail  
22 use by a particular segment of the population?

23 MR. BUNOSKY: Practically, no. However, we do  
24 have a listing of commercial customers versus  
25 residential customers, and those are all outlined. You

1 could go physically out and disconnect every commercial  
2 customer from a main line. That physical capability  
3 does exist.

4 MR. RUBIN: Let's get to that. In order for  
5 California American Water to physically disconnect a  
6 commercial user, does California American Water have  
7 that legal authority today?

8 MR. BUNOSKY: We have certain legal authority  
9 to do that for nonpayment or if a commercial customer  
10 was causing a health and safety hazard through say a  
11 backflow prevention issue that was occurring or not  
12 following the rules and regulations that we have. We  
13 would have that legal authority for a means -- a  
14 violation of our rules and regulations.

15 MR. RUBIN: That was a fairly general answer.  
16 Let's get more specific.

17 If the State Water Resources Control Board  
18 were to issue a cease and desist order against  
19 California American Water and require reduction by a  
20 certain amount of its extraction of the Carmel River  
21 water, does California American Water currently have  
22 the authority to terminate water service to a  
23 commercial water user?

24 MR. BUNOSKY: No, we do not.

25 MR. RUBIN: In order to do that, would you

1 need to obtain authority from the Public Utilities  
2 Commission from the State of California?

3 MR. STEPHENSON: Yes, we would.

4 MR. RUBIN: Can you guarantee that the Public  
5 Utilities Commission would grant the request if it's  
6 made by California American Water?

7 MR. BUNOWSKY: No, we cannot.

8 MR. RUBIN: Can California American Water  
9 curtail use for a particular use, say the amount of  
10 water used to brush teeth?

11 MR. STEPHENSON: No, they cannot.

12 MR. RUBIN: From an operational standpoint can  
13 California American Water do that?

14 MR. BUNOSKY: No, we cannot.

15 MR. RUBIN: If the State Water Resources  
16 Control Board ordered California American Water to  
17 reduce extractions of Carmel River water by 15 percent  
18 during the 2009-2010 water year, could California  
19 American Water offset the Carmel River water reduction  
20 with water from the Seaside Basin?

21 MR. BUNOSKY: No.

22 MR. RUBIN: Can you explain why?

23 MR. BUNOSKY: The Seaside Basin has been an  
24 adjudicated basin. It's also under a three-year  
25 reduction schedule of the amount of water available to

1 Cal Am under that adjudicated decision for the amount  
2 of water you can withdraw from the Seaside Basin.

3 MR. RUBIN: Would your answer change if the  
4 State Water Resource Control Board issued an order that  
5 required California American Water to reduce its  
6 extractions by -- from the Carmel River by 15 percent  
7 but concentrated the reductions during the April  
8 through October period?

9 MR. BUNOSKY: No.

10 MR. RUBIN: Do you think that the  
11 difficulties -- strike that.

12 Would the answer to either of the last two  
13 questions change if the percent reduction ordered by  
14 the State Board increased?

15 MR. BUNOSKY: No.

16 MR. RUBIN: If the State Water Resources  
17 Control Board ordered California American Water to  
18 reduce its extractions from the Carmel River by  
19 15 percent during the 2009-2010 water year, could  
20 California American Water offset the Carmel River water  
21 reductions with implementation of conservation  
22 measures?

23 MR. BUNOSKY: No.

24 MR. RUBIN: By that answer, do you believe  
25 that California American Water Company cannot guarantee

1 the reduction?

2 MR. BUNOSKY: That's correct.

3 MR. RUBIN: It's possible that California  
4 American Water could implement conservation measures?

5 MR. BUNOSKY: Yes, we could implement  
6 conservation measures, but we have no guarantee or  
7 scientific data exactly guaranteeing how much water  
8 would be saved.

9 MR. RUBIN: And in order to implement new  
10 conservation measures, would California American Water  
11 have to seek approval from the California Public  
12 Utilities Commission?

13 MR. STEPHENSON: If there were specific  
14 measures that we were requesting recovery for, yes.

15 MR. RUBIN: Mr. Bunosky, if the State Water  
16 Resources Control Board ordered California American  
17 Water to reduce extractions of Carmel River water by a  
18 percentage greater than 15 percent during the 2010-2011  
19 water year, could -- would your answer change? Excuse  
20 me. Let me restate that. I apologize.

21 If the State Water Resource Control Board  
22 ordered California American Water to reduce extractions  
23 of Carmel River water by 15 percent during the  
24 2009-2010 water year but concentrated the reductions to  
25 the April through October period, could California

1 American Water offset the Carmel River water reduction  
2 through implementation of conservation measures?

3 MR. BUNOWSKY: No.

4 MR. RUBIN: Would your answer change if the  
5 percent increased?

6 MR. BUNOWSKY: No.

7 MR. RUBIN: I have an additional set of  
8 questions that are intended to respond to testimony  
9 that was provided yesterday by the District. I don't  
10 know if they can be classified in a particular area,  
11 but they are responsive to testimony provided by the  
12 District. I think I'm just going to have to see if  
13 there's any objections raised as I ask them.

14 For the panel, are you familiar with the  
15 meters used to measure the quantity of water delivered  
16 to California American Water's customers?

17 MR. BUNOSKY: Yes.

18 MR. RUBIN: Do residential customers of  
19 California American Water have two meters?

20 MR. BUNOSKY: No, the majority of customers  
21 only have one meter to their residence.

22 MR. RUBIN: So for the majority of customers,  
23 there is no separate meter for indoor use versus  
24 exterior use?

25 MR. BUNOSKY: That's correct.

1           MR. RUBIN: There was some testimony I believe  
2 yesterday regarding an existing rate application that  
3 California American Water has filed with the Public  
4 Utilities Commission. Mr. Stephenson, are you familiar  
5 with the current rate-related application filed by  
6 California American Water with the California Public  
7 Utilities Commission?

8           MR. STEPHENSON: Yes, I am.

9           MR. RUBIN: Do you know if the California  
10 Public Utilities Commission maintains discretion  
11 whether to grant the application or reject the  
12 application?

13           MR. STEPHENSON: The Public Utilities  
14 Commission can grant the application as requested, deny  
15 the application, or grant some portion thereof.

16           MR. RUBIN: I believe these questions are best  
17 answered by either Mr. Schubert or Mr. Bunosky. Are  
18 either of you familiar with the project involving  
19 importation of water into the Carmel River Basin from  
20 the Salinas River Basin?

21           MR. BUNOSKY: Somewhat familiar with it, yes.

22           MR. RUBIN: What is your understanding of the  
23 potential schedule to complete all needed approvals and  
24 construction to import Salinas River water into the  
25 Carmel River Basin?

1           MR. BUNOSKY: Preliminary area indications are  
2 that that would be possibly 2015 or later.

3           MR. RUBIN: Are either of you familiar with a  
4 desalination plant which the Monterey Peninsula Water  
5 Management District characterizes as the 95-10 project?

6           MR. SCHUBERT: Just in general.

7           MR. RUBIN: Well, I'll ask a few questions,  
8 and if you can't answer it I'll understand. However,  
9 do you know if the Monterey Peninsula Water Management  
10 District has completed review of the 95-10 project  
11 pursuant to the California Environmental Quality Act?

12          MR. SCHUBERT: No, I don't believe they have.

13          MR. RUBIN: Do you know if the Monterey  
14 Peninsula Water Management District has started review  
15 of the 95-10 pursuant to the California Environmental  
16 Quality Act?

17          MR. SCHUBERT: I don't know.

18          MR. RUBIN: Do you know if the Monterey  
19 Peninsula Water Management District has a rate  
20 structure in place to pay for the design of the 95-10  
21 project?

22          MR. SCHUBERT: I can't say, no.

23          MR. BUNOSKY: I don't believe so.

24          MR. RUBIN: Do you know if they have a rate  
25 structure in place to pay for the construction of the

1 95-10 project?

2 MR. BUNOSKY: I do not believe they do.

3 MR. RUBIN: How about for the operation and  
4 maintenance of the 95-10 project?

5 MR. BUNOSKY: I do not think so.

6 MR. RUBIN: No further questions.

7 CO-HEARING OFFICER BAGGETT: Okay. Any  
8 cross-exam by any of the cities? No questions?  
9 Monterey Peninsula Water Management District?

10 MR. SATO: Excuse me. Before  
11 cross-examination starts, I believe that we talked  
12 about this process earlier that you were going to give  
13 us a short break between the direct testimony and our  
14 opportunity at cross-examination.

15 I don't know whether it would be more  
16 efficient if we also allowed the other party, PCL, to  
17 also present its rebuttal testimony, then take a break,  
18 then all parties have the same opportunity to, you  
19 know, prepare whatever questions they need.

20 CO-HEARING OFFICER BAGGETT: That would make  
21 sense. I understood -- who else has rebuttal  
22 testimony, though?

23 CO-HEARING OFFICER WOLFF: Public Trust  
24 Alliance has a witness on Public Trust which is very  
25 different. Do you have rebuttal?

1 MR. SATO: We have no rebuttal.

2 CO-HEARING OFFICER BAGGETT: Anybody else? I  
3 think this is it. Why don't -- we'll grant you -- how  
4 much time do you want? 15?

5 MR. SATO: 15 minutes.

6 CO-HEARING OFFICER BAGGETT: All right. Do  
7 you want to proceed with it? Mr. Laredo is ready; do  
8 you want to hear his --

9 MR. SATO: That's fine.

10 MR. RUBIN: If we're going to take a break  
11 before cross-examination, I would prefer taking a break  
12 now.

13 CO-HEARING OFFICER BAGGETT: We'll take  
14 15 minutes and come back and --

15 MR. SATO: I had suggested that perhaps we  
16 also take the -- I'm sorry, the name --

17 CO-HEARING OFFICER BAGGETT: Do you want to do  
18 PCL first? I mean, Public Trust Alliance, do you want  
19 to do your rebuttal first?

20 MR. SATO: I thought it would be fair to  
21 everybody if we just have everybody get their  
22 case-in-chief on rebuttal out, and then we can take a  
23 break.

24 CO-HEARING OFFICER BAGGETT: Okay. Public  
25 Trust Alliance ready?

1 MS. NELSON: Patricia Nelson for Public Trust  
2 Alliance.

3 We're going to present testimony by Mr. George  
4 Riley. Mr. Riley is just going to make a presentation  
5 with minimum questioning.

6 MR. RUBIN: I apologize, but as the Public  
7 Trust Alliance is settling in, it's probably worthwhile  
8 to state on the record that the California American  
9 Water has four witnesses, all four witnesses were  
10 called as part of cases-in-chief at one point or  
11 another in this proceeding and therefore all four  
12 witnesses have taken the oath, and I'd like to have  
13 that reflected on the record.

14 CO-HEARING OFFICER BAGGETT: Mr. Riley has  
15 also taken the oath.

16 (The following by Mr. George Riley for  
17 PUBLIC TRUST ALLIANCE was determined by  
18 the Hearing Officer to be oral closing  
19 argument.)

20 MR. RILEY: If I could just begin. I want to  
21 direct my comments to the testimony and the exhibits  
22 that have been presented that I have seen.

23 Yesterday there were two. There was a fair  
24 amount of discussion by the Hospitality Association on  
25 a chart of usage and the conservation issue. This is a

1 subject of conservation.

2 And I wanted to point out a couple things. I  
3 don't know if the chart was that necessary, but I want  
4 to point out that that is one chart that has been  
5 submitted to reflect conservation activities.

6 There was a second chart using some of the  
7 same data and presented a slightly different time frame  
8 that was presented with David Pendergrass' testimony,  
9 the City of Sand City.

10 I only want to point out a few things in that.  
11 The chart that was presented by the --

12 MR. RUBIN: I'm sorry; I apologize for  
13 interrupting. I haven't heard a question asked at this  
14 point. And so I might not object if a question is  
15 asked, but having a witness just talk is a little bit  
16 outside of the structure of the proceeding, and it  
17 would be much easier if the witness is asked a question  
18 and responds to those questions.

19 MS. NELSON: Mr. Riley would prefer to make --

20 CO-HEARING OFFICER BAGGETT: Can you just ask  
21 him to comment on the conservation plans.

22 MS. NELSON: Mr. Riley, could you describe  
23 your opinions on the conservation efforts of various  
24 parties?

25 MR. RILEY: Yes. And it's more of

1 interpretation.

2           The plan presented by the Hospitality  
3 Association had a start date for the 1987-88. The same  
4 chart by David Pendergrass also started at the same  
5 time frame, and most of the numbers are exactly the  
6 same.

7           The shutoff date for the Hospitality  
8 Association was '96-97, very soon after the issuance of  
9 95-10. The shutoff date for the data presented by  
10 Pendergrass was 2007, so it's much more current, where  
11 it shows a longer trend in what the conservation  
12 successes have been.

13           And I compliment the Hospitality Association  
14 on having them fast and extensive in the kind of  
15 conservation measures they took and the impacts they  
16 had on the usage.

17           I want to point out a couple of things,  
18 though, that's kind of interesting.

19           The Hospitality Association presented  
20 themselves as having done some extensive research on  
21 this matter. What they simply did is take the  
22 commercial category and divided it in half, 50/50, and  
23 they made an assumption without any documentation or  
24 support about why they split it 50/50.

25           And I'm not arguing with that. I'm just

1 saying that the fact that they presented it as a  
2 substantial research and data presentation, I think  
3 there's a weakness in just their starting point on how  
4 they started out, not undermining at all the kinds of  
5 success they've had.

6           Second, there are about eight categories in  
7 this chart. Speaking for some -- I mean, speaking  
8 about some of the categories, the residential -- well,  
9 I want to point out that the success has been  
10 remarkable. And that's conservation. And it all falls  
11 under the category of conservation. It all falls into  
12 the category targets by category, and those targets  
13 were set by the Water Management District.

14           But I want to point out a difference between  
15 what happens between '96 and '97 compared to 19 -- I  
16 mean 2007. We've got another ten years of action  
17 coming still in response to 95-10.

18           The quickest reaction shown in the '96-97  
19 data, the hospitality data, the quickest reactions came  
20 from the Hospitality Association. There were a limited  
21 number of large users. Large users. So it was easier  
22 to get a quick response, I think.

23           Golf courses is another example, limited in  
24 number but large impacts. So those two showed  
25 fantastic improvements. Now, and --

1 CO-HEARING OFFICER BAGGETT: Wait, Mr. Riley.  
2 I mean, we haven't had any objections, but -- a lot of  
3 what you're making a closing brief argument right here.

4 MR. RILEY: I'm sorry.

5 CO-HEARING OFFICER BAGGETT: And it's  
6 appropriate in a brief, but do you have any -- the idea  
7 of rebuttal is to bring -- do you have any testimony?

8 MR. RILEY: I'll be quicker.

9 CO-HEARING OFFICER BAGGETT: Yeah. If you've  
10 got any testimony. If you are arguing over the  
11 evidence in the record, you will have ample opportunity  
12 to write briefs and argue whether the record reflects  
13 what you think is an error or where you think it's  
14 right or wrong.

15 I mean, it's appropriate what you're saying,  
16 but it's really for your closing argument. If you've  
17 got evidence or information, that's what we need right  
18 now.

19 MR. RILEY: I want to make a point to make a  
20 later point, and I'll get to it.

21 The residential category had hardly any  
22 conservation savings in the first few years. A large  
23 customer base, a lot of individual decisions need to be  
24 made. But over a more extended period of time we've  
25 got very substantial conservation.

1           My point is that conservation measures can act  
2 quickly in some categories, slower in other categories.  
3 That's the point.

4           The other point I want to make later is the  
5 only category that has data in it that is inconsistent  
6 between the two reports and inconsistent with the  
7 testimony presented by the Water Management District is  
8 the category Other.

9           And Other is the category that Cal Am has  
10 basic responsibility for. All the other categories  
11 have responsive custom and -- responses from customers.  
12 Most of the other categories. It was discussed again  
13 just a few minutes ago as unaccounted-for water is  
14 within the Cal Am category, and I want to go back to  
15 that one.

16           My only point is that it takes different times  
17 to implement different conversation measures.

18           Cities' testimony. The city testimony comes  
19 with a contradiction in what's been presented, and I  
20 want to point where I see the contradictions.

21           MR. RUBIN: Before you do that, I'm going to  
22 raise the objection that you raised as a concern,  
23 Hearing Officer Baggett.

24           I understand that there is a legitimate place  
25 for these types of comments. But what's being done is

1 argument; it's not testimony. And so I would ask again  
2 that the witness provide testimony and not argue on the  
3 information that's already been submitted.

4 MR. RILEY: Okay. Help me through this. This  
5 is the first time -- again, I'm sorry if I'm --

6 CO-HEARING OFFICER BAGGETT: You're making an  
7 argument on different conservation measures, which is  
8 fine and helpful, but that's at the end of the  
9 proceeding. We're right now still taking evidence.

10 So if you have any evidence or documents or  
11 anything to present in the rebuttal case, that's what  
12 we need right now. Not observations, but information.

13 MR. RILEY: I'd like to make a comment about  
14 the city testimony that was presented and offer  
15 evidence of an alternative or other actions that the  
16 cities are taking during this interim period.

17 Let me see where I go, and the objections can  
18 stop --

19 CO-HEARING OFFICER BAGGETT: Just jump to the  
20 latter that you just said there.

21 MR. RILEY: Well, I want to point out that the  
22 city testimony, at least in two situations, Carmel  
23 and -- I forget the other one, but I had a note -- they  
24 make reference to rationing and moratorium in the same  
25 sentence. They're against any issuance of the CDO.

1           It reflects a little bit of a misunderstanding  
2 or lack of understanding of the difference between  
3 rationing and moratorium. And I think the conservation  
4 measures are in place, to put those in two different  
5 categories, and when they put them together, I think it  
6 undermines their understanding of what the impacts are  
7 of the CDO.

8           The Hospitality Association had some similar  
9 references to the one-to-one transfer, one-to-one  
10 impact on the economic effects of their operations.

11           My problem with the city testimony is that  
12 they often were saying that they have been in a  
13 long-term cooperative stance with looking for water  
14 supply. And I know for a fact that in 2002 and 2003  
15 they sponsored an issue locally that not only stopped a  
16 desal planning process that was underway in the Water  
17 Management District --

18           MR. McGLOTHLIN: Chairman Baggett, I'm sorry;  
19 I have to object on behalf of the City of Seaside.

20           Again, this is opinion testimony. There are  
21 opinions stated. There's no evidence being presented  
22 here. And it's continuing on. On behalf of the City  
23 of Seaside, we file objection to it.

24           CO-HEARING OFFICER BAGGETT: And the objection  
25 is noted.

1           MR. RILEY: I have a document I could offer  
2 into evidence if it would be accepted. I don't know.

3           MR. McGLOTHLIN: If he has the document or  
4 other evidence to submit.

5           MR. RUBIN: And let me raise an objection that  
6 might contradict the statement that was just made. A  
7 little bit of what Mr. Riley is doing is voicing  
8 opinions that are very much the types of statements  
9 that he tried to bring in as part of his written  
10 testimony. It was not allowed in.

11           And so this is a bit of a different  
12 circumstance that will be facing California American  
13 Water, probably the second or third attempt by the  
14 Public Trust Alliance to bring in information  
15 notwithstanding the orders of the Hearing Officers.

16           MS. NELSON: When we were presenting our  
17 case-in-chief, Mr. Rubin made an objection that  
18 Mr. Riley's testimony went beyond the scope of his  
19 written testimony.

20           So at this point, he's taking a different  
21 tactic, and he's responding to the new evidence  
22 presented in the case-in-chief of various parties.

23           CO-HEARING OFFICER BAGGETT: But if it's  
24 argument on whether that evidence goes to a remedy or  
25 goes to liability, he can make that in his closing

1 brief, in your written argument. You can argue whether  
2 they were right or wrong.

3 Right now, the idea of rebuttal is to bring in  
4 evidence. If you've got evidence, a document, a chart,  
5 expertise. You can ask questions to get that  
6 information out of your witness.

7 MR. RILEY: Is testimony not evidence in this  
8 case?

9 CO-HEARING OFFICER BAGGETT: You're making an  
10 argument on why evidence presented by other parties is  
11 right or wrong. And that's your right, and we  
12 appreciate that, and you'll have that opportunity in a  
13 closing brief.

14 The opportunity right now is to present  
15 evidence, not opinion, but evidence to contradict or to  
16 rebut your case. You understand? What we need now is  
17 evidence, not opinion, because you'll get a chance to  
18 voice your opinion, and we appreciate that and we need  
19 that.

20 But that's what the closing brief is, why you  
21 think this is right versus this, or this is the best  
22 solution versus this solution. You'll get that  
23 opportunity.

24 But that's not -- the time is not now. So  
25 that's -- I don't know how to explain it any better.

1           MR. RILEY: And I'm sorry that I'm not  
2 following this very well, and I do want to make one  
3 comment about what it is that I'm trying to represent  
4 and what it is I'm trying to present.

5           Briefly, I'm a ratepayer and a user. I'm one  
6 of the very few people here who live with the dilemma  
7 as well as the potential outcomes, and I have a very  
8 strong research base in a lot of the data, and if I am  
9 kind of restricted, I don't know how much that plays  
10 here, but if I am kind of restricted from presenting  
11 what I have researched -- and I will call it data, even  
12 though I may not have, I haven't put in a document. I  
13 mean, I didn't know I needed to necessarily. I thought  
14 rebuttal documents didn't have to be documented, or  
15 rebuttal arguments or points didn't have to be  
16 documented. I thought it was included in testimony.

17           My point I want to make is as a ratepayer and  
18 a user, the DRA, you know, has a major role to play in  
19 a lot of the issue around Cal Am, and they don't  
20 testify here, they don't present any information. I  
21 feel like I'm kind of a loss leader in many ways on the  
22 issues concerning who is going to pay for this.

23           And as much as the citizens and the customers,  
24 every time questions come up around Cal Am, they talk  
25 about Cal Am's spending the money. Well, we end up

1 paying.

2 CO-HEARING OFFICER BAGGETT: I appreciate  
3 that, and I would appreciate an argument in the closing  
4 brief on policy statements saying that is one of the --  
5 that's exactly appropriate for a closing brief is to  
6 write why, how this will affect ratepayers, how it will  
7 affect the economy, how it's going to affect the public  
8 policy issues. And we would welcome that discussion.  
9 It's just not testimony.

10 MR. RILEY: Okay. Well, let me go -- I have  
11 several categories and subjects I wanted to cover.

12 So let me jump to the 15 percent, or 20  
13 percent, in the first step of the CDO, the draft CDO  
14 and how it can be implemented based on information that  
15 I have, very specific information that I can refer to  
16 and get documents in support of it. I don't know what  
17 I have right now, but the research I've done,  
18 information I know.

19 And if I can't present that, then I have a  
20 hard time figuring out how you get the information that  
21 I think is critical to help make a decision. And it  
22 comes up because of the arguments that Cal Am was just  
23 making ten minutes as well as --

24 CO-HEARING OFFICER WOLFF: I'll let you  
25 provide one specific example of information you have so

1 we can get a sense of what you're talking about.

2 MR. RILEY: Cal Am in December '07 said in a  
3 public comment, a public release as well as a newspaper  
4 report, 20 percent of residential users consume  
5 46 percent of the water, and they were going to  
6 undertake a process of auditing and reviewing and see  
7 what ways they might reduce that use.

8 MR. RUBIN: I think there is a couple of  
9 objections that exist here.

10 One, again, Mr. Riley is here as a layperson.  
11 I don't believe he's been advanced as an expert. I  
12 don't believe his statement of qualifications warrant  
13 him being treated as an expert in any of the areas that  
14 we have been talking about.

15 Second, clearly the -- at least the current  
16 line of dialogue that Mr. Riley is proposing is hearsay  
17 evidence; and I'm going to point back to the California  
18 Government Code which allows for hearsay but only in  
19 limited circumstances where it's intending to explain  
20 evidence. And again, I don't know what evidence  
21 Mr. Riley is trying to explain. He hasn't presented  
22 any.

23 CO-HEARING OFFICER BAGGETT: Mr. Sato.

24 MR. SATO: Thank you.

25 My observations of Mr. Riley's testimony at

1 this point are that he is simply testifying as a user  
2 and a ratepayer, and he's giving a comment on  
3 information and testimony that has been presented in  
4 Phase 2.

5 And I think it's appropriate for him to be  
6 able to make those kinds of observations based upon his  
7 status as a ratepayer and a customer. I don't think  
8 that he needs to be an expert at this point in order to  
9 provide testimony.

10 CO-HEARING OFFICER BAGGETT: I would agree  
11 that you do not need to be an expert. You are a  
12 ratepayer.

13 But, you're presenting testimony -- how it's  
14 going to affect you as a ratepayer is your focus, your  
15 line of questioning? I'm just struggling with how to  
16 make you understand how you get this in as evidence  
17 versus closing argument.

18 MR. SATO: It would be nice if his counsel  
19 would help him a little bit in terms of directing the  
20 questions to him so that it elicits the appropriate  
21 types of information.

22 Because it seems to me that what he is trying  
23 to testify to right now is information that he believes  
24 that he received from Cal Am related to some reduction  
25 in, you know, water usage.

1           So I don't know what he's going to testify to  
2 either. But I would suggest that counsel help him  
3 along here. It would help us all.

4           MS. NELSON: Mr. Riley, as a ratepayer, how do  
5 you feel that the actions of Cal Am or the cities have  
6 affected your -- have affected what you need to do as a  
7 ratepayer?

8           MR. RILEY: I felt that 95-10 put everybody on  
9 the fast track. I thought everybody who was taking  
10 actions between '90 -- I wasn't here then, but a lot of  
11 it is history, and I won't even mention that.

12           Since I've been here, I thought the fast track  
13 generated by 95-10 brought a whole lot of people into  
14 the picture, not just Cal Am.

15           One of the problems I have with the CDO is  
16 it's directed to Cal Am, yet many people argue that  
17 it's a broader issue than that. One of the agencies  
18 that did start to respond to 95-10 was the Water  
19 Management District with the desal proposal of 2000.  
20 That made sense to me.

21           In very short order, that project didn't get  
22 off the ground. They were the first one out of the  
23 chute with the desal proposal.

24           Cal Am just a few minutes ago mentioned --  
25 they made a reference to they had a desal proposal that

1 had a delivery date of 2008. That's a totally new  
2 number. It's never been documented, and there is no  
3 testimony to that effect.

4 The first desal proposal from Cal Am emerged  
5 in 2004.

6 You had another project that was in motion in  
7 2002. It was not pursued totally, and that's okay. My  
8 point is Cal Am --

9 MR. LAREDO: I'd like to move this -- I'd like  
10 to object. There is no question pending. This goes  
11 far beyond his feelings as to how he reacted as a  
12 ratepayer.

13 MS. NELSON: Mr. Riley, do you feel that any  
14 of the new supply options and attempts by the various  
15 parties have an advantageous effect on you as a  
16 ratepayer?

17 MR. RUBIN: I'm going to object, before he  
18 answers the question and just again to the line of  
19 questioning and the attempt to provide testimony.

20 Maybe a solution here is to allow the Public  
21 Trust Alliance or Mr. Riley another opportunity to  
22 submit a policy statement, if that's the intent here?  
23 I don't know. But as attorneys trying to participate  
24 in this process, it puts us at a distinct disadvantage.  
25 I don't even know how to try to cross-examine him on

1 these statements.

2 CO-HEARING OFFICER BAGGETT: Let me try this.  
3 You will get an opportunity, and we would appreciate a  
4 written -- what you're arguing now, if you could just  
5 write it down for the closing, that would be the most  
6 appropriate place. It would be the most helpful place  
7 for all of us.

8 I mean, I understand the issues you're raising  
9 or the conclusions you are drawing from the issues that  
10 have been raised. We appreciate that. And that I  
11 think would be very helpful to this Board.

12 But it's not part of -- now is not the time.  
13 It's going to complicate the record. And the record is  
14 the only thing -- if this ever goes to court, that's  
15 what the court takes. And it will make a record that's  
16 going to be very difficult for deciphering because it's  
17 argument. So --

18 MR. RILEY: If I may, just one more comment.

19 CO-HEARING OFFICER BAGGETT: Okay. One more.  
20 We'll call this closing argument. Okay? This is no  
21 longer rebuttal, there's no cross-examination. We'll  
22 give you an oral closing argument here.

23 MR. RILEY: I only have two sentences.

24 The Sand City desal, recently hyped as a major  
25 contribution to offsetting water supply. Obviously

1 it's very small. It took seven years to get that  
2 permit. For anybody to think that the time frame for a  
3 large scale Coastal Water Project with many, many more  
4 features to it would have taken also seven years, I  
5 think is ludicrous.

6 Second sentence. I'm sorry; there's supposed  
7 to be one. The cost. The contract cost of Cal Am for  
8 buying that water is \$3,800 per acre foot. That's  
9 almost twice the cost of any other proposal on line.

10 That's what we're facing with trying to  
11 resolve the 95-10 issue, paying an enormous amount of  
12 money -- enormous amount of money -- for short-term  
13 water. And we've got to just find that there are many,  
14 many options beyond desal that we ought to be pursuing.  
15 And that's my point around conservation issues I would  
16 like to get to at some point.

17 CO-HEARING OFFICER BAGGETT: And I really  
18 appreciate that. I think we all would really like for  
19 you to put some of this in a written closing brief or  
20 closing argument or closing opinions. That would be  
21 helpful to us.

22 MS. NELSON: Thank you. We appreciate your  
23 invitation to include Mr. Riley's argument in our  
24 closing brief.

25 CO-HEARING OFFICER BAGGETT: Thank you.

1           With that, let's take 15 minutes. And we'll  
2 come back with cross.

3           (Recess)

4           CO-HEARING OFFICER BAGGETT: Okay. Let's go  
5 back on the record. Cross-examination, rebuttal.

6           CROSS-EXAMINATION BY MR. LAREDO

7           FOR MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

8           MR. LAREDO: Thank you. Again, David Laredo  
9 on behalf of Monterey Peninsula Water Management  
10 District. I have one topic that I'd like to explore,  
11 and that's the question of curtailed use, and I will  
12 address the panel, perhaps Mr. Bunosky.

13           I want to explore Cal Am's authority to  
14 curtail use. As to an existing residence that's now  
15 connected to the California American Water system, does  
16 Cal Am have authority to curtail construction of say a  
17 new bathroom to an existing residence?

18           MR. BUNOSKY: No.

19           MR. LAREDO: After that's constructed, would  
20 it have the ability to curtail water use through that  
21 bathroom?

22           MR. BUNOSKY: No.

23           MR. LAREDO: Would it have authority to  
24 curtail installation of a new lawn in an existing  
25 residence?

1 MR. BUNOSKY: No.

2 MR. LAREDO: Construction of a pool in an  
3 existing residence?

4 MR. BUNOSKY: No.

5 MR. LAREDO: How about for commercial  
6 conversion of an office to a restaurant?

7 MR. BUNOSKY: No.

8 MR. LAREDO: Would you have the authority to  
9 curtail the addition of new seats to an existing  
10 restaurant?

11 MR. BUNOSKY: No.

12 MR. LAREDO: Does California American Water  
13 have the authority by itself to define water waste?

14 MR. BUNOSKY: No.

15 MR. LAREDO: Who would define that?

16 MR. BUNOSKY: That would be through our  
17 tariffs and filed with the Public Utilities Commission.

18 MR. LAREDO: What authority does California  
19 American Water have to prevent water waste from an  
20 existing customer?

21 MR. BUNOSKY: Water waste that would be  
22 occurring because a customer has a leak, that is having  
23 water run down into the public right-of-way into the  
24 street and to other businesses or homes, we have the  
25 authority then to shut that customer off after being

1 duly noticed because of the public safety issue.

2 MR. LAREDO: What if outdoor irrigation was  
3 thought to be water waste, would California American  
4 Water have the ability to prevent outdoor irrigation as  
5 water waste?

6 MR. BUNOSKY: No.

7 MR. LAREDO: Does California American Water  
8 have the authority to issue citations or fines?

9 MR. Bunosky: No.

10 MR. LAREDO: Thank you. No further questions.

11 CO-HEARING OFFICER BAGGETT: Okay. Who do we  
12 have? Public Trust Alliance? No questions.

13 Carmel River Steelhead Association, and then  
14 the Sierra Club.

15 MR. SILVER: At Mr. Jackson's request and in  
16 his absence, I've been requested to represent the  
17 witness.

18 CO-HEARING OFFICER BAGGETT: That's fine. The  
19 witness?

20 MR. SILVER: The questioner, excuse me.

21 CO-HEARING OFFICER BAGGETT: The questioner.  
22 Okay. Just in case an objection arises?

23 (Laughter)

24 MR. LeNEVE: I will do my best to phrase my  
25 questions so Mr. Rubin can sit down.

1                   CROSS-EXAMINATION BY MR. LeNEVE  
2                   FOR CARMEL RIVER STEELHEAD ASSOCIATION  
3                   MR. LeNEVE: My name is Brian LeNeve. I'm a  
4 board member of the Carmel River Steelhead Association.  
5 I have some questions for Mr. Fuerst.

6                   I took the liberty of totaling your rescue  
7 counts for the Steelhead Association and for the  
8 District, and you state that we've rescued between 90  
9 and 94,000 fish combined this year.

10                  MR. FUERST: Correct.

11                  MR. LeNEVE: And you say that is an increase  
12 in the number of fish?

13                  MR. FUERST: It indicates a number of fish  
14 that were spawned and have -- are now considered young  
15 of the year and that were rescued from drying reaches  
16 of the Carmel River, yes.

17                  MR. LeNEVE: You're not making any statements  
18 as to whether that did go on to increase the adult  
19 return at some point in time?

20                  MR. FUERST: No. There is information that's  
21 directly related to that in the testimony.

22                  MR. LeNEVE: Okay. Then you're not stating  
23 that that increase in the number of juveniles is a  
24 result of increase in adults?

25                  MR. FUERST: It's -- relative to what? I

1 mean --

2 MR. LeNEVE: Past years.

3 MR. FUERST: There were more adults this year  
4 than last year. There is significantly more young of  
5 the year steelhead this year than last year.

6 MR. LeNEVE: And what do you attribute that  
7 increase in young of the year to, do you know?

8 MR. FUERST: No, I don't. I would add that  
9 there -- when we talk about the adult counts, that  
10 those are the counts that -- adult steelhead counted at  
11 Cal Am's San Clemente Dam, which is 18 and a half miles  
12 upstream.

13 Most all of these rescue fish are below the  
14 dam, so these are adults that did not -- were not  
15 counted in that count, so this is -- these are adults  
16 that came in, I would suspect largely adults that came  
17 in and spawned below the dam. And the young of the  
18 year are their progeny.

19 MR. LeNEVE: Okay. Could the increase in  
20 number of juveniles be a result of perfect water  
21 conditions at the time of the redds -- the eggs are in  
22 the redds?

23 MR. FUERST: What do you mean by perfect water  
24 conditions?

25 MR. LeNeve: No high spring rains to wash out

1 the redds?

2 MR. RUBIN: I'm going to object to the  
3 question. Just -- if you want to hear the answer, you  
4 can; but this is beyond the scope of the rebuttal. And  
5 I believe that the rules of the Board in rebuttal -- or  
6 cross-examination of --

7 CO-HEARING OFFICER BAGGETT: It's a simple  
8 answer. Just answer the question.

9 MR. FUERST: Could you ask it --

10 MR. LeNEVE: Could the increase in juveniles  
11 be a result of perfect water conditions at the time of  
12 the redds? In other words, no high water in the spring  
13 to wash the redds out, correct water temperature at  
14 that point in time?

15 MR. FUERST: It's possible the number of  
16 juveniles would be related to that, to water supply  
17 conditions.

18 MR. LeNEVE: You mentioned that these are more  
19 than likely. Actually, you said there were fish  
20 spawned below San Clemente. Could we be getting an  
21 increase in fish spawning below San Clemente due to  
22 years of blockage of migration upstream and lack of  
23 spawning gravel below San Clemente? Could we  
24 genetically be -- in your opinion, could we be  
25 genetically altering these fish to spawn lower in the

1 river?

2 MR. RUBIN: Again, I'm going to raise the same  
3 objection. It's outside the scope of the rebuttal.

4 MR. LeNEVE: I believe he testified that we  
5 have an increase in juvenile fish. I'm trying to  
6 explore why we have an increase in juvenile fish.

7 MR. FUERST: I don't know the answer to the  
8 question you posed.

9 MR. LeNEVE: Okay. I guess really that is all  
10 my questions, then.

11 CO-HEARING OFFICER BAGGETT: Thank you.  
12 Mr. Silver?

13 MR. LeNEVE: Yes, I do have another question.  
14 Of these 94,000 -- 90- to 94,000 fish, do you know  
15 where they have gone, that have been rescued?

16 MR. FUERST: Yes. Approximately half of them,  
17 I believe 45,000 to 48,000, have gone to the District's  
18 Sleepy Hollow steelhead rearing facility which is on  
19 Cal Am property below San Clemente dam. That limit has  
20 been agreed -- that's the maximum that that facility  
21 can hold this year, by mutual agreement by the National  
22 Marine Fisheries Service and the California Department  
23 of Fish and Game.

24 The remaining fish rescued by the District and  
25 the Carmel River Steelhead Association have gone to

1 perennial reaches of the Carmel River or into the  
2 Carmel River Lagoon. And I don't know the breakdown of  
3 that.

4 MR. LeNEVE: Would you believe 12,000 to the  
5 lagoon?

6 MR. FUERST: I'm not sure.

7 MR. LeNEVE: Assuming there were 12,000 sent  
8 to the lagoon, there's been quite a bit of testimony  
9 today regarding that water quality in the lagoon.

10 Could that backfire on us, putting those fish  
11 in the lagoon, knowing also that the Steelhead  
12 Association has put their fish in the lagoon?

13 MR. LAREDO: Objection. This does exceed the  
14 scope of the rebuttal.

15 CO-HEARING OFFICER BAGGETT: Yeah. That  
16 wasn't testified to in rebuttal.

17 MR. LeNEVE: You're the boss.

18 CO-HEARING OFFICER BAGGETT: Yeah. If you are  
19 comfortable answering --

20 MR. FUERST: I'm not certain.

21 MR. LeNEVE: Okay. Thank you.

22 Do you know what the mortality rate was on the  
23 fish -- or let's put it this way, what the survival  
24 rate on the fish was last year in the Sleepy Hollow  
25 facility?

1           MR. RUBIN: I'm going to object to the  
2 question; outside the scope of rebuttal.

3           CO-HEARING OFFICER BAGGETT: Just answer the  
4 question if you can. I know you're not a fisheries  
5 biologist.

6           MR. FUERST: I don't recall exactly.

7           MR. LeNEVE: Okay. Do you recall whether  
8 there was documentation of a 50 percent mortality rate  
9 one year?

10          MR. FUERST: I believe since the facility has  
11 been operating there has been a 50 percent mortality  
12 rate. It has averaged less than that, and it's less  
13 than what we estimate to be the survival rate in the  
14 river.

15          MR. LeNEVE: Thank you.

16          CO-HEARING OFFICER BAGGETT: Sierra Club have  
17 any? Mr. Silver, do you have any additional questions  
18 of behalf of the Sierra Club?

19          MR. SILVER: No, Sierra Club does not.

20          CO-HEARING OFFICER BAGGETT: Thank you. PCL?

21                    CROSS-EXAMINATION BY MR. MINTON

22                    FOR PLANNING AND CONSERVATION LEAGUE

23          MR. MINTON: Jonas Minton for the Planning and  
24 Conservation League. Three quick questions for  
25 Mr. Bunosky.

1           Mr. Bunosky, do you agree with Mr. Schubert's  
2 testimony on the -- operational problems would occur  
3 with the Board's adoption of Water Board Order 95-10?

4           MR. RUBIN: I'm not sure if that was testimony  
5 that was provided today.

6           MR. MINTON: I thought in your case-in-chief  
7 that Mr. Schubert did so testify.

8           MR. RUBIN: I'm not sure if I asked any  
9 questions of Mr. Schubert and got any responses to the  
10 operational effects of implementing -- excuse me,  
11 continuing to implement requirements under Order 95-10.

12           CO-HEARING OFFICER BAGGETT: The witness can  
13 answer to the best of his knowledge.

14           MR. BUNOSKY: Yes.

15           MR. MINTON: Thank you. Do you believe that  
16 those operational impacts would be significant?

17           MR. BUNOSKY: Yes.

18           MR. MINTON: My last question. I'll share  
19 this as a former water agency general manager sort of  
20 empathetic with the situation Cal Am is in. If the  
21 State Board adopts a cease and desist order  
22 substantially the same as the Prosecution has ordered,  
23 over Cal Am's objection, would Cal Am increase or  
24 accelerate its efforts for water conservation in  
25 securing supplemental water supplies?

1           MR. RUBIN: I'm going to object to the  
2 question; calls for speculation.

3           MR. MINTON: Let me rephrase, if I may. If  
4 the State Board adopts the draft cease and desist order  
5 over Cal Am's objection substantially in the form that  
6 the Prosecution has put forth, would you as a manager  
7 of Cal Am recommend to Cal Am that it accelerate or  
8 increase its efforts for increasing conservation and/or  
9 supplemental water supplies?

10           MR. BUNOSKY: We currently have a new  
11 conservation filing in front of the Commission that  
12 would institute up through Stages 1 through 7 in  
13 response to water shortages.

14           We would be looking at every measure we can in  
15 regard to seeking authorities from our regulatory  
16 agency, California Public Utilities Commission, to  
17 implement other measures possible to try and meet  
18 supply availability with demand as best we could.

19           MR. MINTON: Is that in excess of the efforts  
20 you're now undertaking?

21           MR. BUNOSKY: I believe Stages 1 through 7  
22 only get up to a 50 percent reduction. The draft cease  
23 and desist order is larger than that. So there  
24 wouldn't be any -- we don't have any mechanism proposed  
25 at the moment that would go beyond a 50 percent

1 reduction in demand.

2 MR. MINTON: If the cease and desist order is  
3 adopted, would you recommend to the company that it  
4 develop additional actions and measures subject to PUC  
5 and other approvals?

6 MR. BUNOSKY: The company would be doing  
7 everything in its regulatory authority of trying to  
8 meet supply with demand at that point.

9 Again, there is no guarantee that we can  
10 control demand or customers' use, but we would do what  
11 we would have to do in regard to meet all of the  
12 requirements of public health and safety as well as all  
13 the regulatory restraints that were put upon the  
14 company at that point in time.

15 MR. MINTON: Thank you.

16 CO-HEARING OFFICER BAGGETT: Prosecution?

17 CROSS-EXAMINATION BY MR. SATO

18 FOR THE PROSECUTION TEAM

19 MR. SATO: Good afternoon. Reed Sato,  
20 Prosecution Team. Good afternoon, hopefully for the  
21 last time in these proceedings. A few questions for  
22 Mr. Fuerst.

23 You testified to fish recovery efforts in  
24 2008, and you talked about the increased number of fish  
25 that have been recovered as a result of those efforts.

1 Do you know whether these recoveries have to be made  
2 because of low Carmel River flows in 2008?

3 MR. RUBIN: I'm going to object to the  
4 question. The rebuttal was focused exclusively on the  
5 result of the rescue program.

6 Why the rescue program is in place was  
7 discussed extensively during cases-in-chief. I believe  
8 the question goes beyond the scope of rebuttal.

9 CO-HEARING OFFICER BAGGETT: Mr. Sato?

10 MR. SATO: I think he's talked about the  
11 outcome, and I just want to know whether -- what his  
12 belief is as to why that outcome is what it is.

13 MR. RUBIN: That's not what the question went  
14 to. It's why is there a recovery program in place.  
15 And that was not the subject of rebuttal.

16 CO-HEARING OFFICER BAGGETT: Sustained. What  
17 you just asked is a different question, so why don't  
18 you re-ask.

19 MR. SATO: Let me ask it a different way.  
20 I'll approach it from a different -- you testified  
21 about the recovery of fish in 2008; correct?

22 MR. FUERST: Yes.

23 MR. SATO: And do you have an understanding  
24 why the recovery of fish occurred in 2008?

25 MR. FUERST: Yes.

1 MR. SATO: And why is that?

2 MR. FUERST: It's a combination of factors.

3 It relates to the amount of water available in storage  
4 for reservoir releases. Also the amount of pumping by  
5 Cal Am and non-Cal Am pumpers between the release and  
6 the lower river. Because the end result is that the  
7 lower six miles of the river has become dewatered this  
8 year.

9 MR. SATO: So the pumping activities, those  
10 would affect the flows in the Carmel River; is that  
11 correct?

12 MR. FUERST: Correct.

13 MR. SATO: Now, when you talk about the  
14 recovery of these fish, do you have any understanding  
15 as to why the recovery obtained more fish this year?

16 MR. FUERST: No, I'm not certain. It's the  
17 rescue of the fish. By recovery, you mean rescue?

18 MR. SATO: Yes.

19 MR. FUERST: No. The numbers are larger than  
20 we have ever experienced, and again I think that adult  
21 count at San Clemente Dam is above average, but not  
22 doubling of the record, the number of adults. So it  
23 was prolific adults in the river.

24 MR. SATO: Now, beyond the fact that you are  
25 reporting on a high recovery amount, you're not -- are

1 you providing any type of testimony as to why that  
2 recovery occurred?

3 MR. FUERST: No, I'm not.

4 MR. SATO: And you're not opining as to  
5 whether or not this indicates any particular trend for  
6 the juvenile steelhead in the Carmel River; is that  
7 correct?

8 MR. FUERST: No. We're reporting on the  
9 number of steelhead rescues in 2008 by the District and  
10 the Carmel River Steelhead Association.

11 MR. SATO: So you're not saying that that is  
12 an improvement in the steelhead or not an improvement  
13 in the steelhead; is that correct?

14 MR. RUBIN: I'm going to object; it's  
15 ambiguous in terms of what is meant by improvement in  
16 the steelhead.

17 MR. SATO: I'll withdraw.

18 So is your testimony -- well, strike that.

19 You are not opining as to whether or not there  
20 is any trend in terms of the number of steelhead,  
21 juvenile steelhead, in the Carmel River over any period  
22 of time; is that correct?

23 MR. FUERST: Right. I'm giving one data point  
24 for water year 2008.

25 MR. SATO: In terms of the rescued fish, do

1 you know how many of those fish survive the recovery  
2 effort?

3 MR. RUBIN: I'm going to object to the  
4 question. It's ambiguous in terms of time. Survive  
5 for how long of a period?

6 MR. SATO: I intend it to be open-ended.

7 After the fish are recovered in 2008, do you  
8 know how many of them have survived?

9 MR. FUERST: I know -- I don't. Of the  
10 70,000 -- that's a brand new number. I know when we  
11 were at 45,000, and that's what has been put into the  
12 facilities. I'm not certain of the survival rate of  
13 those that have been put into -- either back into  
14 perennial sections of the river or the lagoon.

15 But of the 45,000, I think there are more than  
16 40,000 surviving at this time. So the loss would be  
17 5,000 out of 45,000.

18 MR. SATO: And when you say you think -- what  
19 was the number, 40,000?

20 MR. FUERST: About 45,000 have been rescued  
21 and put into the rearing facility.

22 MR. SATO: And I think you said you think  
23 there's about 40,000 or so right now?

24 MR. FUERST: My recollection is when I last  
25 saw the report for the facility, those were the

1 numbers. 45,000 put in. And because we're later into  
2 the year and there's always concerns about higher water  
3 temperatures and the potential for disease, that the  
4 survival -- that of the 45,000 that had been rescued,  
5 transported and placed in the facility, there were  
6 about 40,000 surviving.

7 MR. SATO: And this is based upon a report  
8 that you observed?

9 MR. FUERST: It's based on a report that was  
10 provided to me by the fisheries staff.

11 MR. RUBIN: If you don't mind, Mr. Sato,  
12 there's reference to a facility. Just so the record's  
13 clear, can we have the witness identify what he means  
14 by facility?

15 MR. SATO: Certainly.

16 MR. FUERST: The facility is the -- it's  
17 referred to as the Sleepy Hollow -- excuse me, Sleepy  
18 Hollow Steelhead Rearing Facility. It's located  
19 approximately one mile downstream of Cal Am's  
20 San Clemente Dam on the Carmel River.

21 MR. SATO: All right.

22 I have a few questions for some of the other  
23 folks on the panel. And I can't remember which of you  
24 testified, so I think either Mr. Bunosky or  
25 Mr. Stephenson. One of you talked about a rule 14.1.

1 Do you recall which one testified to that rule?

2 MR. STEPHENSON: It was probably me.

3 MR. SATO: What is rule 14.1?

4 MR. STEPHENSON: Rule 14.1 is our conservation  
5 and rationing plan.

6 MR. SATO: Would it also be considered part of  
7 your Urban Water Management Plan?

8 MR. STEPHENSON: It may be referred to in that  
9 plan, but this is a California Public Utilities  
10 Commission rule, 14.1.

11 MR. SATO: All right.

12 Are you familiar with regulation 15 of the  
13 Monterey Peninsula Water Management District?

14 MR. STEPHENSON: Could you repeat the  
15 question, please?

16 MR. SATO: Are you familiar with regulation 15  
17 of the Monterey Peninsula Water Management District?

18 MR. STEPHENSON: To some extent.

19 MR. SATO: Do you have an understanding that  
20 the provisions of regulation 15 are very similar to the  
21 provisions in rule 14.1?

22 MR. STEPHENSON: They are very similar. They  
23 were -- basically we worked together to try to blend  
24 the two to make them consistent.

25 MR. SATO: So as far as you're concerned, the

1 intent would be to be consistent with one another;  
2 correct?

3 MR. STEPHENSON: They are intended to be as  
4 consistent as they could be when they were -- at the  
5 time that they were written.

6 MR. SATO: Now, I believe that there was  
7 testimony by one of you that in imposing your  
8 conservation measures or rationing measures, that one  
9 type of use could not be favored over another. Do you  
10 recall that testimony?

11 MR. BUNOWSKY: Yes.

12 MR. SATO: Did I correctly characterize the  
13 testimony?

14 MR. BUNOWSKY: Yes, that we couldn't  
15 discriminate against one type of use versus another.

16 MR. SATO: All right. Now, isn't it true that  
17 when you reach one of the stages in regulation 15,  
18 let's say Stage 7, that there are provisions that allow  
19 for certain uses to be favored over other uses? Water  
20 uses?

21 MR. BUNOWSKY: Yes, I believe so. I  
22 believe -- whether it's at Stage 6 or 7, I'd have to  
23 look at the exact document -- it's outdoor water use is  
24 curtailed.

25 MR. SATO: Can you think of anything else?

1           MR. BUNOWSKY: I'd have to look at the exact  
2 rule.

3           MR. SATO: Do you recall that with regard to a  
4 Stage 7 proceeding that there is a preference to  
5 provide water for residential use over other uses?

6           MR. BUNOWSKY: Again, I'd have to read the  
7 exact rule 7.

8           MR. STEPHENSON: I believe that if you get to  
9 Stage 7 there is a minimum amount of water that has to  
10 be provided for each resident, and if -- that minimum  
11 amount of water, you have to provide that first. So if  
12 that water then did limit other uses to a greater  
13 extent, that's where it would have to go. But you have  
14 to provide a minimum amount of water for each person.

15          MR. SATO: So with that testimony, does that  
16 change your testimony as to whether or not there can be  
17 preferences for one type of water use over another  
18 depending on the available amount of water?

19          MR. STEPHENSON: It does not change my  
20 testimony at all. We don't have preference or the  
21 right to determine who gets what water. It's a  
22 regulatory -- basically a regulatory compact at that  
23 point.

24          We had a rule and regulation that says this is  
25 what has to happen. We don't have the right to make

1 any judgment as to who gets what water.

2 MR. SATO: All right. But it would be correct  
3 that the net effect of such a rule, if it was  
4 triggered, is that certain water users would be  
5 receiving water over other water users; correct?

6 MR. STEPHENSON: Again, if they're speaking of  
7 Stage 7, I think just health and safety requiring, you  
8 know, a certain amount of water for every individual,  
9 you have to do that.

10 MR. SATO: Now, Mr. Stephenson, have you ever  
11 been involved in a situation where a Stage 7 has been  
12 determined? Or is the proper terminology declared?

13 MR. STEPHENSON: No, I have not.

14 MR. SATO: How about you, Mr. Bunosky?

15 MR. BUNOSKY: No.

16 MR. SATO: Anybody on this panel that was  
17 involved in a Stage 7 on behalf of Cal American?

18 MR. SCHUBERT: No.

19 MR. SATO: How about a Stage 6; any of you  
20 been involved in a Stage 6 situation?

21 MR. STEPHENSON: No, I have not.

22 MR. SATO: Mr. Bunosky?

23 MR. BUNOSKY: No.

24 MR. SATO: Mr. Schubert?

25 MR. SCHUBERT: No.

1           MR. SATO: And how about Stage 5? Have any of  
2 you been involved, for Cal Am, been involved in a  
3 Stage 5?

4           MR. BUNOSKY: Can I have a clarification of  
5 your question in regard to a Stage 5? Is that a  
6 Stage 5 anywhere in the country or in regard to  
7 Monterey?

8           MR. SATO: Anywhere in the country.

9           MR. BUNOSKY: I don't believe there is any  
10 other Stage 5s that I'm aware of, because that's a  
11 specific term referenced to the Monterey area.

12          MR. SATO: Limiting it to on your own.

13          MR. BUNOSKY: Just trying to understand the  
14 question.

15          MR. SATO: Mr. Stephenson?

16          MR. STEPHENSON: I'm not sure because I'm not  
17 sure how it was referred to back in the '90s when we  
18 were in a situation of low water in the Monterey area  
19 and in southern California, so I do not know.

20          MR. SATO: Mr. Schubert?

21          MR. SCHUBERT: No.

22          MR. SATO: Now, I think that you gave some  
23 testimony, one of you, about the ability to operate  
24 under a Stage 3. Did one of you provide that  
25 testimony?

1 MR. STEPHENSON: I did.

2 MR. SATO: It's your testimony that if there  
3 were a 15 percent reduction in available water to Cal  
4 Am from the Carmel River Basin, that that would trigger  
5 a Stage 3 level; is that correct?

6 MR. STEPHENSON: No.

7 Again, Stage 3 triggers -- there is various  
8 triggers to Stage 3. And it's all based on the  
9 11,285 acre feet.

10 MR. SATO: But if there were a 15 percent  
11 reduction from Cal Am's current use of the Carmel River  
12 Basin, do you believe that would trigger a Stage 3?

13 MR. STEPHENSON: Again, our rule is specific  
14 and built into the rule where it is based on the  
15 11,285.

16 MR. SATO: I'm sorry. I don't know what  
17 you're telling me.

18 MR. STEPHENSON: What I'm saying is that Stage  
19 3 will not be triggered unless the various stages of  
20 Stage 3, which there are four different places to look  
21 at it, where that trigger mechanism is set at 11,285.

22 So if there was a 15 percent reduction, we  
23 would still be looking at 11,285.

24 MR. SATO: Okay. Now, assume that the 15  
25 percent reduction takes Cal Am below 11,285. For the

1 purposes of this question, would that trigger Stage 3?

2 MR. STEPHENSON: No. Again, we are -- the  
3 rule is specific as to setting specific trigger points  
4 on either year-to-date total by the day or year-to-date  
5 totals at month end that total up on the annual basis  
6 to 11,285.

7 MR. SATO: Let me ask this a slightly  
8 different way, then. At some point in time, you talked  
9 about Cal Am operating at a Stage 3 level. I'm sorry.  
10 Do you want me to --

11 MR. STEPHENSON: Repeat the question, please.

12 MR. SATO: Can you repeat the question? Read  
13 back the question, please?

14 (Record read)

15 MR. SATO: Do you recall that?

16 MR. STEPHENSON: Yes.

17 MR. SATO: Now, I believe that you said that  
18 that wasn't -- that operation at a Stage 3 level was  
19 not sustainable for a long period of time. Do you  
20 recall that testimony?

21 MR. STEPHENSON: Yes.

22 MR. SATO: And what do you consider a long  
23 period of time?

24 MR. STEPHENSON: Well, there are sunset  
25 provisions to the Stage 3. Basically we're back within

1 our month-end target or year-to-date target for the  
2 11,285, then end of the water year, then we actually  
3 sunset out of Stage 3.

4 MR. SATO: No, I understand what the Stage 3  
5 requirements say. But you said that you didn't think  
6 that you could operate for a long period of time. Was  
7 that what you were referring to, just the regulatory  
8 requirements?

9 MR. STEPHENSON: Yes.

10 MR. SATO: Okay. So have you considered  
11 whether or not Cal Am could operate at a Stage 3 for an  
12 extended period of time assuming those regulatory  
13 requirements were still being triggered?

14 MR. STEPHENSON: We could operate under the  
15 conditions of Stage 3, sure.

16 MR. SATO: And for an unlimited amount of  
17 time, as long as those regulatory limits were being  
18 triggered; is that correct?

19 MR. STEPHENSON: Again, Stage 3 is only  
20 implementing, you know, increased rates. So it's not  
21 requiring a great deal of other effects, so we could  
22 operate, you know, under that, yes.

23 MR. SATO: Now, talking about, you testified  
24 about water conservation and water rationing measures.  
25 Does Cal Am have an Urban Water Management Plan?

1 MR. BUNOSKY: Yes.

2 MR. RUBIN: I'm going to object to the  
3 question. I believe it's outside the scope of  
4 rebuttal.

5 MR. SATO: Well, related to their discussion  
6 about rationing and conservation.

7 MR. RUBIN: There were no questions that I  
8 asked that referenced an Urban Water Management Plan.  
9 If you're going to tie anything to -- I mean, there's a  
10 lot of things out there that deal with conservation you  
11 could tie it to. That opens up the door to any  
12 questions you want.

13 MR. SATO: I think this is pretty specifically  
14 related to the issue of water conservation and  
15 rationing.

16 I mean, it is my understanding the plan that  
17 Cal Am is supposed to have that addresses these issues.  
18 And I would think that it probably ties directly to the  
19 things that Mr. Bunosky and Mr. Stephenson have been  
20 testifying to.

21 If you can indulge me and if they could just  
22 answer the question, then I'll show you where I'm going  
23 with this.

24 CO-HEARING OFFICER BAGGETT: I'll overrule.  
25 Just continue. Objection is noted.

1 MR. STEPHENSON: Can you repeat the question?

2 MR. SATO: Can you read back the question,  
3 please?

4 (Record read)

5 MR. BUNOSKY: Yes.

6 MR. SATO: And do you know who at Cal Am is  
7 responsible for preparing that plan?

8 MR. BUNOWSKY: Various entities through the  
9 organization that pull information together, and then  
10 it's done under myself.

11 MR. SATO: So you are the direct supervisor of  
12 the production of the plan?

13 MR. BUNOWSKY: Correct.

14 MR. SATO: Do you have an understanding as to  
15 whether or not your plan has currently been approved by  
16 the Department of Water Resources?

17 MR. LAREDO: Objection. This is clearly  
18 outside the scope.

19 CO-HEARING OFFICER BAGGETT: I would sustain  
20 that one. I thought you were -- you said you were  
21 moving towards the conservation elements. The approval  
22 is not relevant.

23 MR. LAREDO: And perhaps Mr. Sato could also  
24 give an offer of proof that he asked for the other  
25 providing cross-examination.

1 MR. SATO: Well, I mean, it was within the  
2 scope of the -- I'm not going beyond the scope. At  
3 least I have no intention to go beyond the scope of the  
4 direct testimony provided during rebuttal.

5 CO-HEARING OFFICER BAGGETT: Just --

6 MR. SATO: And really, this won't take much  
7 longer.

8 CO-HEARING OFFICER BAGGETT: Continue.

9 MR. SATO: So with regard to the development  
10 of the plan, have you considered the situation in which  
11 Cal Am would be required to reduce its current  
12 diversions from the Carmel River Basin to a level of  
13 less than one -- 11,285 acre feet per annum?

14 MR. BUNOWSKY: I believe we have not addressed  
15 that in the plan.

16 MR. SATO: No further questions.

17 CO-HEARING OFFICER BAGGETT: Thank you.

18 Questions from staff?

19 --o0o--

20 EXAMINATION BY THE HEARING TEAM

21 --o0o--

22 CHIEF COUNSEL TAYLOR: This will be brief.  
23 Has the Water Company ever denied service for new  
24 connections within the company's service area to the  
25 best of your knowledge? Any of you gentlemen?

1 MR. STEPHENSON: Could you repeat that?

2 CHIEF COUNSEL TAYLOR: Sure. I'm sorry. Has  
3 the Water Company ever denied service to new  
4 connections where the service was for homes or  
5 development within the service area?

6 MR. BUNOWSKY: No, we have not.

7 CHIEF COUNSEL TAYLOR: Has Cal Am ever denied  
8 new service connections because there is insufficient  
9 water to supply existing customers? Let me lay a  
10 foundation.

11 Does California American Water Company manage  
12 additional -- other water companies than that in the  
13 Monterey Peninsula within the State of California?

14 MR. STEPHENSON: Yes, we do.

15 CHIEF COUNSEL TAYLOR: Roughly how many?

16 MR. STEPHENSON: We have about seven  
17 districts.

18 CHIEF COUNSEL TAYLOR: All right. Has the  
19 Water Company ever denied new service connections for  
20 any of these service areas when there was insufficient  
21 water to supply existing customers?

22 MR. STEPHENSON: We do not deny service to any  
23 potential customer that has the proper authority to  
24 come to us for service in our certificated areas.

25 CHIEF COUNSEL TAYLOR: So hypothetically, if

1 you had a severe drought, Stage 7, peak water demand  
2 period of the year, mid summer, and you had  
3 insufficient water to supply existing customers, if all  
4 the approving authorities had authorized a new  
5 connection, you would add the new connection to the  
6 system?

7 MR. STEPHENSON: If we do not have a  
8 moratorium in place, yes. But we are required to.

9 CHIEF COUNSEL TAYLOR: How do you go about --  
10 how is such a moratorium established?

11 MR. STEPHENSON: A moratorium has to be  
12 approved by the Public Utilities Commission.

13 CHIEF COUNSEL TAYLOR: And is it the  
14 California American Water Company that petitions for  
15 such a moratorium, or someone else?

16 MR. STEPHENSON: In most cases, yes.

17 CHIEF COUNSEL TAYLOR: I asked the question  
18 improperly. May the California American Water Company  
19 petition for such a moratorium?

20 MR. STEPHENSON: Yes, they may.

21 CHIEF COUNSEL TAYLOR: Might the District  
22 petition for such a moratorium?

23 MR. STEPHENSON: The petition for denying  
24 service within our service territory would have to come  
25 from California American Water Company.

1 CHIEF COUNSEL TAYLOR: Might the State Water  
2 Resources Board adopt such a petition with the PUC?

3 MR. STEPHENSON: I do not know.

4 CHIEF COUNSEL TAYLOR: To the best of your  
5 knowledge -- this is pushing the envelope here -- does  
6 the California American Water Company have discretion  
7 to deny new service connections when there is  
8 insufficient water?

9 MR. RUBIN: And again, the question's if the  
10 witnesses know the answer?

11 CHIEF COUNSEL TAYLOR: They apparently knew  
12 the answer to the questions on --

13 MR. RUBIN: I just want to make sure that the  
14 record's clear.

15 MR. FUERST: I don't know.

16 MR. STEPHENSON: To the best of my knowledge,  
17 we have to supply service to any customer that comes to  
18 us within our service area.

19 CHIEF COUNSEL TAYLOR: Thank you.

20 CO-HEARING OFFICER BAGGETT: I've got a couple  
21 that follow on the same line.

22 CO-HEARING OFFICER WOLFF: Go ahead.

23 CO-HEARING OFFICER BAGGETT: I guess this is  
24 for the Water Management District, then, because it's  
25 clear from the Cal Am witnesses that have testified

1 they have no authority to regulate new hookups. Does  
2 the Water Management District have that authority?

3 MR. FUERST: As we've described, we have  
4 authority under the District's Expanded Water  
5 Conservation and Standby Rationing Plan at certain  
6 advanced stages. Currently I think it's Stage 6.  
7 There is a moratorium -- excuse me.

8 Stage 5, there would be a moratorium on new  
9 connections; and Stage 6, there would be a moratorium  
10 on new connections involving public water credits.

11 MR. LAREDO: Could I confer with my witness  
12 for a moment?

13 CO-HEARING OFFICER BAGGETT: Sure.

14 (Conference between counsel and witness)

15 CO-HEARING OFFICER BAGGETT: So let me  
16 continue.

17 MR. LAREDO: If the witness could expand his  
18 answer a bit, I think it might put this in context.

19 CO-HEARING OFFICER BAGGETT: Let me add to it,  
20 and then you can expand.

21 So if any water purveyor within the Peninsula  
22 Water District had a shortage of water, how is that --  
23 I guess, how does that equate into your decision  
24 whether to allow additional bedrooms, additional  
25 bathroom fixtures, additional hookups, if there is a

1 known shortage. Not just Cal Am, the Water Management  
2 District, assuming you have more than one.

3 MR. FUERST: Right. This is into the  
4 District's water allocation program which we discussed  
5 earlier. And the steps there, that allocation has been  
6 established, and it is referred to as the water pie.  
7 How much water is available community-wide. And then  
8 that a pie has been sliced up among the jurisdictions.

9 The last time that any slice was distributed  
10 from the District to the jurisdictions allocating water  
11 was in 1993 as a result of a development of a new well  
12 in the Seaside area.

13 And so that's referred to as the Peralta  
14 allocation, and it's associated with Cal Am's Peralta  
15 well. So that established for each jurisdiction a bank  
16 account of water available.

17 And you heard testimony regarding that  
18 allocation that currently exists. It's on the order of  
19 about 120 acre feet left, water that has been  
20 identified by the District as available and then  
21 allocated to the jurisdictions to decide within their  
22 jurisdictions what land use.

23 CO-HEARING OFFICER BAGGETT: So if the  
24 District determines that there is water available, then  
25 someone has to make the water available? I mean, if

1 you allow, I assume the District controls new hookups?

2 MR. FUERST: Yes and no. The District, again  
3 in this process where water is allocated from the  
4 District to the jurisdictions, and then if an  
5 individual uses -- a residential customer. If a  
6 residential customer in any jurisdiction wants to  
7 develop that property, the first place they would go is  
8 they'd probably go to the City. The City would say we  
9 cannot issue a water permit until you go to the  
10 District and get a water permit. And before you go  
11 there, let's estimate what you need and you can confirm  
12 that with the District.

13 So that would be done. And it would be -- a  
14 determination would be made for that particular use on  
15 that property, how much water would be used. And then  
16 that would be shown to the City.

17 If they have water remaining in their  
18 allocation -- and many cities now have exhausted their  
19 allocations -- but if there was a city such as Seaside,  
20 water would be available to be released to that use.

21 And we would allow that. We would issue a  
22 water connection permit. That applicant with that  
23 water application permit could then go back to the  
24 City, get a building permit, construct the building,  
25 and Cal Am would set up, and at that time they also go

1 to Cal Am, Cal Am would actually set the meter, and  
2 then they could use water at that point.

3 CO-HEARING OFFICER BAGGETT: And Cal Am's  
4 obligated to set a meter and provide water to that.

5 MR. FUERST: Within their authorized area,  
6 yeah.

7 CO-HEARING OFFICER BAGGETT: Absent PUC  
8 prohibition.

9 MR. FUERST: Correct.

10 CO-HEARING OFFICER WOLFF: Just to follow up  
11 on that to make sure I understand. Speaking a bit  
12 casually here, but it seems to me that conserved water  
13 has been used to support new connections, and that  
14 there is a system that utilizes conserved water to  
15 support new connections. That's how supply has been  
16 kept below the -- what is perceived as the regulatory  
17 limit in 95-10; is that correct?

18 MR. FUERST: That's basically correct, yes.

19 CO-HEARING OFFICER WOLFF: All right.

20 There are three pieces of information that I'm  
21 looking for still that have come up previously in the  
22 entire hearing, and we've talked about them; and I can  
23 try to elicit them from the witnesses, but I am  
24 actually going to ask the attorneys if there is an  
25 easier way to do this.

1           The three pieces of information are: The  
2    schedule going forward on the Coastal Water Project  
3    which I understand Cal Am's prepared to supply or point  
4    me to the right exhibit.

5           The second one is the percentage of indoor  
6    versus outdoor water use in the service area.

7           And the third was the hospitality industry  
8    use, excluding golf course, which we discussed  
9    yesterday.

10          Do the attorneys have any suggestions as to  
11    how to get that information in the record, the easiest  
12    way?

13          MR. LAREDO: As to the second and third, the  
14    percentage of indoor versus outdoor and the  
15    hospitality, and just actually getting the golf usage,  
16    the District could -- does not have that in a  
17    presentable form right at this moment.

18          We certainly could provide a later added  
19    document that would go to both of those points and we  
20    could do that within a week.

21          MR. RUBIN: As a suggested mechanism, probably  
22    the easiest at this point is through a declaration by  
23    the most appropriate witness attesting to the truth of  
24    the information in the document.

25          There is an issue here in terms of being able

1 to cross-examine on the information, but probably the  
2 best vehicle at this point that I could see is through  
3 a declaration.

4 CO-HEARING OFFICER BAGGETT: I guess I would  
5 propose it coming from the Water Management District as  
6 a governmental agency, and we can take official notice  
7 as it's information from the files, and the declaration  
8 as part of the record. And we can take official notice  
9 of that if it comes from them.

10 So if you could provide any information, I'll  
11 clarify, out of your -- you can reformat it, but it  
12 comes out of your existing files.

13 MR. LAREDO: And I believe it will come from  
14 existing files. If it cannot come from existing files,  
15 then we would identify it and do it by declaration.  
16 Otherwise, we would submit that as an official  
17 document.

18 MR. LOWREY: Mr. Baggett and Mr. Wolff, I have  
19 an exhibit from Mr. McKenzie. I don't have  
20 Mr. McKenzie, but part of the group of exhibits that  
21 were submitted with his testimony indicated a  
22 Hospitality Association use through 1977, in that time  
23 frame.

24 I have one of the exhibits from that set that  
25 wasn't presented, but that does break out the golf

1 course use. I have it electronically. I could submit  
2 it with a declaration from him, as Mr. Rubin suggested,  
3 for what it's worth if you want me to do that.

4 CO-HEARING OFFICER WOLFF: This is up through  
5 1997?

6 MR. LOWREY: Through '97, right.

7 CO-HEARING OFFICER WOLFF: It's in your  
8 case-in-chief? It's already one of the exhibits?

9 MR. LOWREY: No, it's not. It's not one of  
10 the exhibits in there.

11 CO-HEARING OFFICER WOLFF: It seems to me it's  
12 dated to some extent. If we have more recent  
13 information from the Water Management District, that  
14 would be more useful. I do appreciate the offer.

15 CO-HEARING OFFICER BAGGETT: I think we're  
16 going down an incredible slippery slope here.

17 CO-HEARING OFFICER WOLFF: Right. I would  
18 agree.

19 CO-HEARING OFFICER BAGGETT: Unless it comes  
20 from an official, I think an agency where its records  
21 which have been submitted under the care of, say, the  
22 Water Management District, then I think we can take,  
23 obviously, notice of that.

24 If it's from another party, I think we run  
25 into objections right and left, through recross, all of

1 that. So let's just leave it up to the District to get  
2 us the information.

3 MR. LAREDO: We will do so by the end of next  
4 week.

5 MR. MINTON: Mr. Baggett, just for  
6 clarification: Is this material that is currently in  
7 the files of the Monterey Peninsula Water Management  
8 District, or would you accept new analyses or different  
9 compilations of data?

10 CO-HEARING OFFICER BAGGETT: I think it has to  
11 be something derived from the existing records.

12 MR. MINTON: Thank you.

13 MR. LAREDO: We would provide the source data,  
14 and then if there is any manipulation we would show  
15 what was done with the source data.

16 MR. SATO: You know, I understand what you are  
17 trying to attempt here, Mr. Baggett. But it seems to  
18 me that if there are explanations that need to be  
19 provided to explain some of data that is going to be  
20 provided by the District, it would be better to be done  
21 under a declaration.

22 My suggestion would be, however, that if it is  
23 done so under the declaration that you give the  
24 parties, the other parties, an opportunity to file  
25 written questions to the District for them to then

1 respond to under oath, and then we can -- you will be  
2 taking care of the opportunity to have  
3 cross-examination of that particular declaration and  
4 without the requirement that they have to do that.

5 CO-HEARING OFFICER BAGGETT: I think if the  
6 District finds they're going to have to reformulate --  
7 I just would hope that someplace in your volumes of  
8 files, I just -- we saw Cal Am's documents; as I  
9 recall, they were eight feet high.

10 Someplace in those official filings in the  
11 District office must be what Gary wants, the  
12 breakout -- and what I'm interested in -- is the  
13 breakout between rural, residential, commercial,  
14 landscape, nonlandscape, whatever -- we understand  
15 there's confidentiality issues. So we're just asking  
16 for what's there. Don't go manufacture something.

17 MR. RUBIN: So it sounds like the path that  
18 we're going down is Monterey Peninsula Water Management  
19 District would be requesting official notice in  
20 response to the request by the Hearing Officers.

21 CO-HEARING OFFICER WOLFF: On two items.

22 MR. RUBIN: What I heard is -- to the extent  
23 they respond to all three, then is probably the best  
24 course of action.

25 CO-HEARING OFFICER WOLFF: Well, is the

1 schedule for the Coastal Water Project already in the  
2 exhibits submitted in Phase 1? That was the suggestion  
3 earlier.

4 MR. RUBIN: Yeah. Obviously in the half an  
5 hour that I had, I didn't have enough time to go  
6 through that. I will look and also look to see if the  
7 Monterey Peninsula Water Management District might have  
8 that as a part of a presentation.

9 MR. LAREDO: We do not have a Coastal Water  
10 Project schedule that would come from our records to be  
11 able to respond to the question.

12 CHIEF COUNSEL TAYLOR: We might be able to put  
13 it together based upon the testimony that was submitted  
14 for Phase 1. We'll have to go through that as well.

15 CO-HEARING OFFICER WOLFF: Well, when you say  
16 put it together, actually I was told earlier today the  
17 schedule already exists. But what I'm looking for is  
18 the schedule that testimony is referring to.

19 MR. RUBIN: I don't think we submitted a  
20 single piece of paper like with a Gantt chart on the  
21 necessary steps to get the Coastal Water Project  
22 completed, the date that's been testified to.

23 But there might be a way to present this  
24 concisely based upon the testimony that has already  
25 been submitted during Phase 1 to not raise any of the

1 evidentiary issues of submitting a declaration at this  
2 point.

3 CO-HEARING OFFICER BAGGETT: I have a  
4 suggestion for that one. I think for that one the  
5 simplest would be, once we have the transcript of the  
6 proceedings, you have your evidentiary record, you can  
7 just construct a table based on the evidence in the  
8 record, put it in your closing brief, and you've got  
9 it.

10 CO-HEARING OFFICER WOLFF: That's not actually  
11 what I'm looking for. We don't actually have -- and  
12 that's where I could elicit it from testimony -- we  
13 don't actually have the intermediate dates between an  
14 EIR going on now and water being delivered in 2015. We  
15 don't have the steps that are involved.

16 But every engineering project has got a Gantt  
17 chart. It's got permitting. It's got design. It may  
18 have bidding. It's got construction. It's got these  
19 elements. They have the chart. I'm asking them to  
20 submit the chart.

21 It's not a recreation of the testimony, but a  
22 gap in the testimony, actually.

23 MR. RUBIN: Again, it's at the pleasure of the  
24 hearing officers on how you want to approach this.  
25 There are a number of different ways to do this. One

1 of the ways Dr. Wolff just proposed is to ask a general  
2 question about it and see what the response is.

3           The other one, what I was suggesting -- I  
4 don't know if it would give you the information you're  
5 asking for -- but to go through and comb through the  
6 testimony that we provided for Phase 1 and see if we  
7 could do what Hearing Officer Baggett was suggesting  
8 and construct it based on evidence that is already part  
9 of the record. I don't know if it would be responsive  
10 or not.

11           A third option that I could see is through a  
12 declaration that attaches either a narrative that  
13 explains it or some sort of a chart.

14           CO-HEARING OFFICER BAGGETT: I'll ask it  
15 another way. Was not there an EIR prepared?

16           CO-HEARING OFFICER WOLFF: It's in process.

17           CO-HEARING OFFICER BAGGETT: It's in process?

18           MR. SCHUBERT: The EIR is in process.

19           CO-HEARING OFFICER BAGGETT: So there is no  
20 certified EIR at this point?

21           MR. SCHUBERT: That's correct.

22           CO-HEARING OFFICER WOLFF: Good question,  
23 though.

24           MR. RUBIN: The EIR, the documents that we're  
25 talking about, the REPOG and coming up with

1 alternatives and we talked about the dates on the draft  
2 and the final.

3 CO-HEARING OFFICER WOLFF: Let me ask the  
4 witness a question or two. Does the draft EIR include  
5 a schedule for completion of the Coastal Water Project?

6 MR. SCHUBERT: I don't honestly know. I think  
7 it does. But again, it's a draft, it's being worked on  
8 by the Commission staff.

9 CO-HEARING OFFICER WOLFF: I understand. Are  
10 you aware of a Gantt chart for the Coastal Water  
11 Project in the possession of the engineering division  
12 of California American Water Company?

13 MR. SCHUBERT: Yes.

14 CO-HEARING OFFICER WOLFF: So either a  
15 schedule in the EIR or the Gantt chart in your  
16 possession, either would be acceptable to me. Very  
17 simple.

18 CO-HEARING OFFICER BAGGETT: I'm just trying  
19 to figure out some way to get it without  
20 cross-examination and declarations and questions and --  
21 if it's in control of the PUC, that's who is preparing  
22 the EIR?

23 MR. SCHUBERT: Yes, that's correct.

24 CO-HEARING OFFICER BAGGETT: Yes. We could do  
25 some creative official notice of the draft document of

1 the PUC. I'm just trying to figure out a way to do it  
2 without creating lots of work for all the lawyers in  
3 the room.

4 I mean, I think we've got plenty of work to do  
5 without -- if it's some official document that's just  
6 showing the time frame, I don't think we're asking for  
7 a great controversy.

8 MR. LAREDO: Well, unfortunately, there is not  
9 yet a draft EIR, so there is no official document.  
10 With all due respect, I think the best we can do is to  
11 accept a declaration from Cal Am as to their estimates  
12 of these times.

13 They will be their estimates. I suppose if  
14 people want to object, they could.

15 CO-HEARING OFFICER BAGGETT: And then we will  
16 then ask that be served to the parties, we'll give the  
17 parties a week from the time it is served to respond to  
18 any questions to Cal Am which they may have.

19 MR. RUBIN: But -- and I don't know if you  
20 want to have questions or if you want to give an  
21 opportunity for people to raise objections to it.

22 The one major caveat that I would need to  
23 state for the record is: If we're going to be  
24 submitting a declaration that attaches any type of a  
25 table, projections on schedule, clearly it's the

1 best-informed schedule, but it's subject to change.

2 CO-HEARING OFFICER WOLFF: Of course. Of  
3 course.

4 CO-HEARING OFFICER BAGGETT: So we understand  
5 the questions involved.

6 CO-HEARING OFFICER WOLFF: Well, this is part  
7 of why the schedule is important, because it will show  
8 the duration of time as Cal Am's current best estimate  
9 of the amount of time needed to obtain permits after an  
10 EIR is certified, and the best estimate of the amount  
11 of time needed to design, the best estimate of time  
12 needed to construct, and so forth. Just standard  
13 things I'm simply looking for.

14 So if you're stating your declaration will be  
15 a declaration which has attached to it the Gantt chart  
16 Mr. Schubert says he knows exists, I'm satisfied with  
17 that. But I'm not looking for a summary of the  
18 testimony or an edited version of the document. Just  
19 that document itself.

20 MR. RUBIN: And the only other -- again, just  
21 to make it clear that if we were going down -- if we  
22 comply with your request, what we would also want to be  
23 able to do is in the declaration make it clear for the  
24 record that it's -- that it's a current schedule and  
25 subject to change because of factors outside the

1 company's control.

2 CO-HEARING OFFICER WOLFF: Of course.

3 MR. SATO: I just want to clarify what exactly  
4 the other parties who receive this declaration are  
5 going to be expected to do.

6 We would have to provide our questions about  
7 the document in writing within, what, a week of our  
8 receipt of the document?

9 CO-HEARING OFFICER BAGGETT: Yeah, I think we  
10 would allow a week.

11 MR. SATO: And then Cal Am would be required  
12 to respond to those questions in also a week after  
13 that?

14 CO-HEARING OFFICER BAGGETT: Yes.

15 MR. RUBIN: And this is a little bit of a  
16 slippery slope because again, just to be protective of  
17 my client, we -- without knowing what the questions  
18 are, we're being put in a very difficult position; and  
19 I don't know until we see the questions whether we are  
20 going to be able to respond to them.

21 But clearly we can be responsive to  
22 Dr. Wolff's request to provide the chart.

23 How we deal with questions that either are  
24 raised and answered or not answered, I guess would  
25 be --

1 CO-HEARING OFFICER BAGGETT: I'm trying to  
2 think of how we can narrow the questions, because I can  
3 see when you question whether this is six months versus  
4 eight months for this section, and I -- we don't  
5 want -- I mean that's not what we're asking for.

6 We're asking for the schedule the engineers  
7 are preparing. It's not whether the engineers are  
8 competent, incompetent. We just want a simple time  
9 line.

10 MR. SATO: I understand. And I think that,  
11 you know, we lawyers tend to over-lawyer on this  
12 particular issue. I just wanted to make sure that, you  
13 know, people have the opportunity to raise questions if  
14 they have -- I'm not expecting that we're going to have  
15 to utilize this process. But in order to preserve, you  
16 know, the integrity of the whole hearing, I think you  
17 have to offer this to us if we're going to use the  
18 declaration.

19 CO-HEARING OFFICER BAGGETT: The simplest  
20 thing might be, as we've done prior, is just get the  
21 parties to stipulate.

22 Prepare it, circulate it, if there's a  
23 problem, let us know. You can put it in such a form  
24 that all the parties stipulate to it. Like we've done  
25 with the other judicial notice. I think we've worked

1 out some other stuff that way.

2 MR. SATO: You've got a lot more parties than  
3 just two, so stipulating between two parties is one  
4 thing. But I'm concerned about the fact that if you  
5 make us all stipulate, this will actually slow it up.

6 CO-HEARING OFFICER BAGGETT: Okay.

7 MR. RUBIN: Maybe what we can do, I like the  
8 suggestion that you were proposing. And what we could  
9 do is see if more than one party, California American  
10 Water, would agree to stipulate, allow parties to raise  
11 objections, and then allow the Hearing Officers to rule  
12 based upon the request to enter a document into  
13 evidence and the objections of other parties.

14 CO-HEARING OFFICER BAGGETT: Okay. I think  
15 that's sufficient. The more you can get to stipulate;  
16 whoever objects objects; send those objections in  
17 writing within a week after submittal.

18 MR. RUBIN: The parties that are able to  
19 stipulate could file it, and you can give some time --

20 CO-HEARING OFFICER BAGGETT: We have a week to  
21 file an objection. Okay. So that makes more sense.

22 So within a week of serving all parties with  
23 the stipulated -- with supplemental evidence or chart,  
24 the parties will have a week -- any aggrieved party has  
25 a week to file an objection and state the grounds for

1 that objection, and we can rule on that objection.

2 MR. MINTON: Mr. Baggett, before concluding  
3 your decision on the matter, if I might speculate that  
4 Mr. Wolff's interest, I'm assuming, is to identify how  
5 long Cal Am thinks it will take to do a project that  
6 would allow compliance with Water Board Order 95-10.

7 CO-HEARING OFFICER BAGGETT: That's in the  
8 record already.

9 MR. MINTON: Well, the reasonableness of that  
10 schedule. The chief --

11 CO-HEARING OFFICER WOLFF: You shouldn't  
12 speculate about my motives.

13 MR. MINTON: Okay.

14 CO-HEARING OFFICER WOLFF: Do you have a  
15 concern?

16 MR. MINTON: It's that -- our concern is that  
17 we may question that schedule and want to have the  
18 opportunity to examine it in a more robust way to  
19 determine if there are ways it could be done quicker.

20 MR. RUBIN: Again, this really again goes down  
21 slippery slope.

22 The witnesses were available on more than one  
23 day during Phase 1, Phase 2, testified on the existing  
24 schedule, I think very consistently talked about the  
25 dates of the 2015 time period. If witness -- parties

1 were, or participants were concerned about that  
2 schedule, wanted to probe about why, they had that  
3 opportunity.

4 So I think what we're doing is kind of  
5 providing some supplemental information.

6 CO-HEARING OFFICER BAGGETT: I would concur.  
7 So the ruling -- well, one more. On this issue or a  
8 different issue?

9 MR. McGLOTHLIN: Other.

10 CO-HEARING OFFICER BAGGETT: Other issue.

11 Okay. On this issue then: Within one week of  
12 service to the parties by Cal Am of a chart describing  
13 the time line for the desal project, parties will have  
14 one week to object. Any parties that can, stipulate.  
15 If you object, state the grounds of those objections,  
16 and we can rule.

17 MR. RUBIN: And what we'll do is we'll prepare  
18 it, circulate it, ask people if they're willing to  
19 stipulate; and then if not, and based upon the  
20 responses that we've received, we'll file it, and maybe  
21 it will be something by the company, maybe it will be  
22 joint, but it will be clear to you, who's supporting  
23 it, who's not, and we'll leave it to others to raise  
24 why they're not.

25 CO-HEARING OFFICER BAGGETT: I think that's a

1 fair ruling. Counsel noted that the 2015 was offered  
2 more than once under cross-examination, and we aren't  
3 reopening that. All we're talking about is the time  
4 lines in between there.

5 CO-HEARING OFFICER WOLFF: Just be sure to  
6 state the date on the Gantt chart, in the submittal.  
7 This is the date of the chart, and the date should be  
8 prior to today, but just the chart you've been looking  
9 for.

10 CO-HEARING OFFICER BAGGETT: Any other  
11 questions?

12 CO-HEARING OFFICER WOLFF: I actually do have  
13 a few questions.

14 CO-HEARING OFFICER BAGGETT: Is this on the  
15 request for --

16 MR. McGLATHLIN: This is the request for after  
17 the Board is finished with the questions they're  
18 asking.

19 Seaside didn't intend to have any  
20 cross-examination of the rebuttal testimony; however,  
21 following the questions that were asked with respect to  
22 new service connections in the Monterey Peninsula Water  
23 Management District allocation program, the City of  
24 Seaside would request permission for just a minute or  
25 two to complete the record with respect to the

1 allocation program and the testimony that was given  
2 pursuant to your questions, Mr. Baggett.

3 CO-HEARING OFFICER BAGGETT: Well, I mean,  
4 this will go on forever. We can't do that. You had an  
5 opportunity.

6 MR. MCGLOTHLIN: We did. We did not know --

7 CO-HEARING OFFICER BAGGETT: Then we're going  
8 to open up all the parties to recross now?

9 MR. MCGLOTHLIN: It is a -- it's solely  
10 related to the matter of the allocation program and the  
11 mechanics of the allocation program.

12 CO-HEARING OFFICER BAGGETT: You can just  
13 brief it. It's in the record. It's in your evidence.  
14 You can put it in your brief.

15 MR. MCGLOTHLIN: Thank you.

16 CO-HEARING OFFICER WOLFF: Last few questions  
17 for the gentlemen from Cal Am.

18 You indicated that you have no authority to  
19 curtail water supply, water deliveries, to any of your  
20 customers under a wide range of circumstances you were  
21 asked about.

22 But you also testified earlier, Mr. Schubert,  
23 that you have a legal obligation to maintain a certain  
24 minimum water pressure in the system, and there may be  
25 other legal obligations that exist with respect to

1 operation of the system.

2           So I want to be clear: Is it your testimony  
3 that you have no authority to curtail water delivered  
4 to your customers even if necessary to comply with some  
5 other legal or regulatory requirement?

6           MR. BUNOSKY: Yes. What we do in regard to  
7 emergency situations, we can use, for instance, a call  
8 for conservation, immediate conservation of customers  
9 to stop using water because of an emergency situation  
10 that is occurring. You can use reverse 911 mechanisms,  
11 radio, TV, that kind of thing.

12           CO-HEARING OFFICER WOLFF: What is reverse  
13 911?

14           MR. BUNOSKY: Reverse 911 is a mechanism that  
15 you can make phone calls en masse, four or five  
16 thousand phone calls to customers alerting them to a  
17 water emergency situation that's occurring, to stop  
18 using water, stop wasting water because it's an acute  
19 emergency at this point in time, we have dangerously  
20 low levels of water in tanks or, you know, demand is  
21 outstripping the supply for that particular point in  
22 time that day.

23           Those mechanisms are in place that we would  
24 request those things from our customers on a voluntary  
25 basis.

1           CO-HEARING OFFICER WOLFF:  So you believe you  
2 have no capacity to in a mandatory fashion cut off  
3 service if necessary to protect public health and  
4 safety and maintain pressure in the system?

5           MR. BUNOSKY:  Again, you're -- you would --  
6 how the system operates is you're pumping water into a  
7 system, keeping tanks at some level.

8           You would not go into a system and arbitrarily  
9 begin to say this side of the neighborhood is not  
10 having water and shut that system down and -- to save  
11 another side of a town.  You continue to operate the  
12 system as one whole at all times.

13          CO-HEARING OFFICER WOLFF:  Well, I haven't  
14 heard a clear answer to my question yet.  You believe  
15 you have no authority to curtail use, even if necessary  
16 in an emergency; is that correct?

17          MR. STEPHENSON:  Let me clarify.  There is --  
18 under the emergency conservation rationing plan, you  
19 can -- the District can declare an emergency in a  
20 situation and could put us into phase 7 immediately if  
21 that situation occurred.

22          CO-HEARING OFFICER WOLFF:  Thank you.

23          MR. STEPHENSON:  The District could declare  
24 that, because they could then work through our rules  
25 where it could be implemented.

1 CO-HEARING OFFICER WOLFF: Thank you. And are  
2 any of the three of you attorneys?

3 MR. STEPHENSON: No.

4 MR. BUNOSKY: No.

5 MR. SCHUBERT: No.

6 CO-HEARING OFFICER WOLFF: I just wanted to be  
7 clear on that. I'll come back to that if there's going  
8 to be questions for the closing briefs so the attorneys  
9 can give opinions.

10 One last question -- I think it's one last  
11 question. One of you testified that you could not  
12 implement conservation measures unless they were  
13 approved by the CPUC; is that correct?

14 MR. STEPHENSON: That's correct.

15 CO-HEARING OFFICER WOLFF: And you were the  
16 gentleman?

17 MR. STEPHENSON: It was either Mr. Bunosky or  
18 myself.

19 CO-HEARING OFFICER WOLFF: And if you wanted  
20 to implement some sort of conservation measure, is it  
21 your testimony that you are prohibited from doing that  
22 unless you have CPUC approval, or is it your -- it  
23 would be more accurate to say your testimony is that if  
24 you did it without CPUC approval you would have no  
25 assurance of cost recovery?

1           MR. STEPHENSON: I think there's two sides to  
2 that. There are certain things that if it affected a  
3 customer, per se, on what we did on a conservation  
4 measure, saying that we have to cut back or we have to  
5 do something else, we would have to have regulatory  
6 authority first.

7           If it is some sort of notification process or  
8 that we want to increase our spending on toilet rebates  
9 or something, we'd probably do the notification process  
10 and we could do the increased, you know, costs to put,  
11 you know, rebates for toilets and so forth without CPUC  
12 authority.

13           Of course that would put us at risk of  
14 recovery for those items.

15           CO-HEARING OFFICER WOLFF: So if I understand  
16 correctly, something that would force your customers to  
17 do something, it would be CPU's authority; but  
18 something that seeks to provide information or provides  
19 an opportunity, a voluntary opportunity to customers,  
20 you could do without CPU authorization, but that would  
21 put you at risk for cost recovery; right?

22           MR. STEPHENSON: That's correct.

23           CO-HEARING OFFICER WOLFF: Thank you.

24           CO-HEARING OFFICER BAGGETT: Any other  
25 questions? Any other questions for staff? Okay. I

1 guess there's no documents, no exhibits.

2 MR. RUBIN: At the risk of causing some  
3 problems, hearing officers, I do have just a small  
4 redirect. Just literally one or two questions, one or  
5 two questions, just a few related to the same subject.  
6 I just want to make sure our point is clear for the  
7 record.

8 CO-HEARING OFFICER BAGGETT: Sand City will  
9 get their opportunity here.

10 MR. RUBIN: Well, I don't -- I am not asking  
11 this question to give Sand City the opportunity, I  
12 think --

13 CO-HEARING OFFICER BAGGETT: Well, it applies  
14 to everybody.

15 MR. RUBIN: Well, it will have to be focused  
16 on --

17 CO-HEARING OFFICER BAGGETT: Recross and  
18 recross of recross. We're late.

19 REDIRECT EXAMINATION BY MR. RUBIN

20 FOR CALIFORNIA AMERICAN WATER COMPANY

21 MR. RUBIN: Again, just -- hopefully just a  
22 couple of questions. And I believe it's directed to  
23 Mr. Stephenson.

24 Mr. Sato was asking some questions about the  
25 ability to maintain the rate structure under a Stage 3

1 conservation for an extended period of time. Do you  
2 recall those questions?

3 MR. STEPHENSON: Yes, I do.

4 MR. RUBIN: I believe that you responded to  
5 his questions indicating that you have the ability --  
6 or the ability exists -- excuse me -- the ability  
7 exists to maintain the rate structure required under  
8 Stage 3 conservation for a long period of time?

9 MR. STEPHENSON: That's correct.

10 MR. RUBIN: And I'm sorry, just for the  
11 record, you stated that you can maintain the rate  
12 structure for a long period of time?

13 MR. STEPHENSON: So long as we did not sunset  
14 back out of it where we again were under the limits of  
15 11,285. If we were continually going over that, then  
16 that Stage 3 would stay in place.

17 MR. RUBIN: The rate structure under Stage 3  
18 conservation is intended to encourage behavior; is that  
19 correct?

20 MR. STEPHENSON: That is correct.

21 MR. RUBIN: Do you have an opinion on whether  
22 behavior would change under Stage 3 conservation if it  
23 were in place for a long period of time?

24 MR. STEPHENSON: In my experience, it's -- the  
25 longer that you are under some sort of plan, the less

1 reactive people are to it.

2 MR. RUBIN: And then one last question: Under  
3 a Stage 3 conservation -- or a few questions.

4 Under Stage 3 conservation, you said there is  
5 a rate structure that generated additional revenue; is  
6 that correct?

7 MR. STEPHENSON: Yes.

8 MR. RUBIN: And what happens to that revenue?

9 MR. STEPHENSON: That revenue is refunded back  
10 to the customers in -- under some mechanism. Right  
11 now, it's refunded back to -- 50 percent to the  
12 customers that incurred the cost and the remaining 50  
13 percent to all customers.

14 MR. RUBIN: And when is it returned to the  
15 customers?

16 MR. STEPHENSON: At the -- when you phase out  
17 of Stage 3.

18 MR. RUBIN: So if there was a Stage 3  
19 conservation that occurred for multiple years, does the  
20 rate structure contemplate a refund?

21 MR. STEPHENSON: The refund would have to be  
22 made at some point in time. Right now, it's held until  
23 we phase out of the Stage 3.

24 MR. RUBIN: Thank you. No further questions.

25 CO-HEARING OFFICER BAGGETT: Any party have

1 recross on the issue of Phase 3? None? Okay. Anybody  
2 up here? If not, we're finished. Thank you.

3 We've got a few procedural issue to go through  
4 here.

5 (Discussion off the record)

6 CO-HEARING OFFICER BAGGETT: To summarize for  
7 the record: Cal Am will provide a chart with as many  
8 parties who will stipulate as additional supplemental  
9 evidence requested by the Board.

10 Those parties who object will have one week to  
11 file an objection, and the more specific the more  
12 helpful it will be for us to timely rule on those  
13 objections.

14 Second, the Water Management District shall  
15 provide two documents as official records from their  
16 files if available with information requested by the  
17 Hearing Officers.

18 Third, the two -- the Department of Water  
19 Resources memorandum by David Todd and letter and the  
20 Urban Water Management website shall be allowed to be  
21 submitted with declarations by Planning and  
22 Conservation League.

23 We will also allow the PUC, since it was part  
24 of official PUC filing, I would ask the declaration  
25 also be with that since it is part of the records of

1 the PUC.

2 And the two e-mails will be allowed as -- but  
3 not to the truth of the matters stated within the  
4 documents, but to support information.

5 MR. RUBIN: In particular with regard to the  
6 letter and the apparent printing of a website page,  
7 we've raised objections to both of these documents.

8 There is a potential for the letter to be  
9 appropriately subject of official notice. I don't know  
10 if that's the case. I would presume that's part of  
11 what you're looking for through a declaration.

12 In terms of the website, I have difficulty  
13 seeing any potential for an official notice of that  
14 document. Maybe this is a long-winded way of saying I  
15 want to preserve our rights to file an objection to the  
16 declarations on these documents.

17 CO-HEARING OFFICER BAGGETT: Right. No. I  
18 was going to comment, but the parties will have a full  
19 opportunity to file objections, but I think the Urban  
20 Water Management is an organization which this Board  
21 actually requires people to join. And I think that you  
22 can get a declaration supporting this is in fact a true  
23 and correct copy of the official website of that  
24 organization. These two pages are the same is DWR.  
25 And the same with the filing with PUC.

1           MR. RUBIN: I'm sorry for belaboring the  
2 point, but --

3           CO-HEARING OFFICER BAGGETT: You'll have an  
4 opportunity to file an objection.

5           MR. RUBIN: I want to make sure the  
6 declaration, particularly the website, doesn't provide  
7 testimony as to the information that is or is not  
8 reported on the website. And that it's simply a --  
9 again, this has the potential of --

10          CO-HEARING OFFICER BAGGETT: I understand.  
11 Being more specific, the declaration will merely state  
12 that this is a true and accurate copy of these specific  
13 pages as stated on the website of Urban Water  
14 Management.

15          Same with the letter. It's not going to the  
16 truth of the information in the letter, it's just a  
17 true and correct copy of a letter written by an  
18 employee of the Department of Water Resources. And  
19 that declaration just verifies these are in fact  
20 copies, not the matters responded to, not responded to.

21          Same with the PUC brief filing, it's not an  
22 argument that it's correct or incorrect. It's just  
23 saying in fact this is a true and correct copy of the  
24 document filed with the California Public Utilities  
25 Commission in this proceeding.

1           So, transcripts are dealt with. Closing  
2 briefs. We can go off the record unless you want to be  
3 on the record.

4           (Discussion off record)

5           MR. FIFE: We would like to suggest a rather  
6 lengthy period for the closing briefs, and we're  
7 thinking something on the order of 120 days.

8           The reason is that the closing briefs seem to  
9 have two functions for us; one is to make arguments,  
10 but the other that goes more to what this Phase 2 is  
11 about is to propose remedies that the State Board might  
12 be able to incorporate into any CDO that it might  
13 issue.

14           And City of Seaside has ideas, and I think  
15 that all the parties have their own ideas. And if we  
16 were given time enough to have the opportunity to get  
17 together to perhaps come up with a degree of consensus  
18 or some commonality, perhaps we could limit the number  
19 of proposals that were submitted.

20           This might benefit the Board, might streamline  
21 its decision-making. And so we would like to ask  
22 sufficient time to see if this is possible. And to be  
23 honest, I don't know what your powers are in this  
24 regard. You have the power to encourage or even --

25           CO-HEARING OFFICER BAGGETT: Well, I think we

1 clearly would encourage if a number of parties want to  
2 sign on to one closing brief, that would certainly be  
3 encouraged. We don't need eight city briefs. If all  
4 the cities could agree to one closing brief, that would  
5 be strongly encouraged.

6 In terms of the time frame, do any of the  
7 parties have a comment on what length? We've heard  
8 120. Let's hear some other time frames.

9 MR. LAREDO: If I may, David Laredo.

10 The Water Management District would concur  
11 with 120 days. If we're going to shorten that, at  
12 least 90 days. I don't believe with the number of  
13 parties and the issues that it would be conducive to a  
14 full party settlement if we had the time.

15 MR. SILVER: And I understand that the  
16 proceedings have been lengthy, although there have  
17 been -- all parties have prepared extensive testimony  
18 already.

19 But I think from the perspective of the Sierra  
20 Club 120 days is in excess of what would be reasonable.  
21 We would propose that a perfectly reasonable period,  
22 for submitting briefing, and we also look to the future  
23 with regard to an interim time in which the Board makes  
24 up its final decision, that we would urge that it be no  
25 more than 60 days at the most.

1           We believe there are matters that do need to  
2 be resolved, especially with regard to the fishery, and  
3 it's appropriate to move forward with some -- with some  
4 expedition in that regard.

5           CO-HEARING OFFICER BAGGETT: It would be nice  
6 to have a resolution before the next fish season. That  
7 would be pushing it at this point.

8           Does the Prosecution have any comments, or Cal  
9 Am, on the length of time, how long is reasonable? I  
10 mean the biggest burden is going to fall on Cal Am, the  
11 Prosecution, and the Water Management District.

12          MR. SATO: If I get this wrong my client I'm  
13 sure will instruct me. So I think that the Prosecution  
14 Team is willing to have an extended period of time of  
15 120 days for the submission of closing briefs.

16          I think that we are also willing to engage in  
17 a process that may discuss alternative resolutions to  
18 the proposed draft CDO. That's what I'll say.

19          CO-HEARING OFFICER BAGGETT: Okay. Cal Am?

20          MR. RUBIN: The benefit of settlement  
21 discussions extends only so far as the parties are  
22 willing to negotiate and kind of move off of arguments  
23 that you've heard here and try to reach a middle  
24 ground.

25          I'm not sure -- while California American

1 Water is willing to entertain those types of  
2 discussions, I'm not sure if everyone is. And for that  
3 reason -- for that reason, I object to any prolonged  
4 briefing period.

5 My thought is have a standard briefing period,  
6 whether it's 30 days or 45 days, to allow for briefing.

7 I do have another wrinkle here. Before I get  
8 to that, my thought is we have 30 or 45 days from the  
9 date that the transcript is ready. My thought is the  
10 parties and the participants can gather, try to assess  
11 whether there is a benefit. If there is a benefit, we  
12 can request a longer brief period.

13 But until we have a better sense of whether  
14 there is any kind of movement towards the middle ground  
15 by all of the parties, I don't think it's worth  
16 extending the period.

17 The one wrinkle I would like to add into this  
18 mix is a distinction I think that the Hearing Officers  
19 have to draw between the Prosecution Team and Cal Am  
20 and other participants in this process in terms of both  
21 page limits for briefs, as well as the opportunity to  
22 file reply briefs.

23 I would recommend that you set a page limit  
24 for the Prosecution team, and a page limit for  
25 California American Water different than all of the

1 remaining parties for the opening or the initial  
2 closing brief, and then allow only the Prosecution Team  
3 and Cal Am to file reply briefs.

4 CO-HEARING OFFICER BAGGETT: I was going to  
5 move to rebuttal briefs. I think that's essential,  
6 page limits. Obviously ten won't do it. I mean, we're  
7 were thinking pretty much whatever pages limits people  
8 felt necessary.

9 MR. RUBIN: I would suggest that a 10-page  
10 limit might be appropriate for the participating  
11 entities. I frankly not only sympathize for you, but  
12 have sympathy for me and Ms. Kincaid who have to review  
13 all of the briefs and try to respond to them.

14 So what I would propose is maybe a 10-page  
15 limit for all of the participating entities, for the  
16 principal parties, the Prosecution Team or Cal Am maybe  
17 a 20, 25 page closing brief, and then again,  
18 Prosecution Team and Cal Am have the opportunity to  
19 file a reply and be the only ones filing a reply.

20 MR. SILVER: With respect to Sierra Club, I  
21 agree with Mr. Rubin's proposed schedule, but I  
22 vigorously believe that the participating parties  
23 should not be relegated simply to an opening brief,  
24 that to the extent there's opening simultaneous  
25 briefing, I think that certainly the other participants

1 in this hearing should have an opportunity to also  
2 submit a reply brief.

3 And I realize that there may be some interest  
4 on the part of the Board, a differential with regard to  
5 pages. But I would urge that the participants or at  
6 least Sierra Club would urge a 15-page opening brief  
7 and maybe a 7- or 8-page reply brief as being  
8 appropriate.

9 But I do urge that the accelerated -- the time  
10 schedule that Mr. Rubin suggested would be appropriate,  
11 and a shorter time for the reply.

12 CO-HEARING OFFICER BAGGETT: Okay. Couple  
13 more comments, and then we'll --

14 MR. LAREDO: Commenting on the differential  
15 page length and the opportunity to file a rebuttal: If  
16 the parties are entitled to due process, then I think  
17 due process calls for all to be treated equally. If  
18 we're to conduct a fair process, then we would like not  
19 a little bit of fairness; we'd like all the fairness.

20 Our interests go to the entire scope of this  
21 proceeding. We would ask for the same length of time,  
22 the same rebuttal opportunities that are given to  
23 others.

24 Mr. JAMISON: Mr. Baggett, Mr. Wolff, Thomas  
25 Jamison representing the Pebble Beach Company. You

1 haven't heard much from us during this hearing, but I  
2 wanted to express my concern regarding the proposal  
3 that was made that.

4           And that is that Pebble Beach Company is a  
5 single-issue sort of party in this, and other people  
6 don't necessarily, and probably likely not, share our  
7 concern.

8           So when I hear about a time period for people  
9 to get together to try to settle and then submit some  
10 kind of joint closing brief, I worry about a situation  
11 where they say, well, we've got 17 people who agree and  
12 guess what, Pebble Beach, we don't care about you. We  
13 don't agree with you, and we don't want your -- to  
14 accept your proposal.

15           That's why my concern would be that if we are  
16 going to follow this process it be clear that there  
17 would be nothing cited in the briefs regarding the  
18 settlement discussion that do occur, that everything  
19 would have to rely on the evidence that was presented  
20 at this hearing.

21           And I tend to agree with the shorter period.  
22 And if I were looking at an alternative, I think what I  
23 might suggest is shorten the time period for people, I  
24 mean from 120 days to that -- and let the parties see  
25 what has been submitted in terms of briefs -- and I

1 agree that replies should be allowed by all parties.

2           And then give the parties time to see what  
3 everybody said, and get together and say is there some  
4 way we could work this out. That seems to be a more  
5 productive way.

6           CO-HEARING OFFICER BAGGETT: One more comment  
7 and then we're going to take a short recess and figure  
8 this out.

9           MR. FIFE: On the question of page limits, I  
10 just want to echo Mr. Laredo, that the cities are  
11 really the real parties in interest in this proceeding.  
12 We will be impacted by whatever decision is made at  
13 least as much if not more than Cal Am, and there is  
14 really no basis for limiting our ability to argue in  
15 response to what's going on in this hearing.

16           On the question of the time limit, we're going  
17 to have a period of getting the record, of dealing with  
18 these other procedural issues, and so asking for 120  
19 days really isn't going to extend the period in which  
20 we're going to be creating closing briefs too much more  
21 probably than a couple months.

22           And the opportunity to come up with a  
23 settlement that would produce a more rational outcome  
24 to this hearing that works for everybody seems like  
25 it's worth an extra 60 days.

1           And if you're going to encourage settlement,  
2    which I think this Board does, you really have to give  
3    it enough time to work. If you constrain us to a time  
4    period in which we can't get this many parties together  
5    to actually come up with a settlement, then there's no  
6    hope for it. So I would encourage you to encourage  
7    that.

8           MR. RUBIN: Just two points. I think I made  
9    my position fairly clear. The first point is: I don't  
10   dispute that there is a lot of -- a lot at stake and  
11   potentially the entities are the people that are at  
12   stake, not just California American Water.

13           But what's being proposed is the issuance of a  
14   cease and desist order against California American  
15   Water. And if there is any issue with regard to --  
16   excuse me. If it issues, if the cease and desist order  
17   issues, and there is a question about compliance, the  
18   entity that's going to be the focus of an enforcement  
19   action is going to be California American Water. So in  
20   terms of due process, there is a distinction.

21           Let me just also point out I believe the rules  
22   that are applicable to this proceeding draw a  
23   distinction. Government Code 11440.50 dealing with  
24   intervention makes it very clear that the Hearing  
25   Officers have the ability to limit or exclude the use

1 of discovery, cross-examination, and other procedures  
2 involving the interveners so as to promote the orderly  
3 and prompt conduct of the proceeding.

4 And clearly, in order to keep it manageable,  
5 and California American Water's ability to respond, we  
6 need to have some clear structure.

7 Having a period to file a reply brief to  
8 potentially 200 pages off briefing, it's going to be  
9 difficult as it is. And obviously limitations and  
10 adequate time will ensure that we have a concise brief.  
11 Thank you.

12 CO-HEARING OFFICER BAGGETT: Last one.

13 MR. SATO: Well, I recall that the hearing  
14 panel was going to indicate to us a number of questions  
15 that it had that it wanted us to address, and I thought  
16 that before we talked about page limits and things like  
17 that that perhaps we ought to hear what it is that the  
18 panel is interested in having us address, and that  
19 might better inform us as to whether or not we need to  
20 argue for certain limitations or not.

21 But I also wanted to say if we're going to  
22 talk about a settlement process, then I think that the  
23 parties are going to need -- and I join with the City  
24 of Seaside -- I mean I think the parties will need a  
25 sufficient amount of time to address these issues.

1           These are -- you know, what I'm saying is  
2 there's a lot of information presented. It's going to  
3 take a while to digest the information. If people are  
4 going to craft any type of reasonable alternative, it's  
5 going to take a while for people to do that.

6           And I don't think that pushing this out, the  
7 briefing schedule, for 120 days is really going to  
8 detrimentally impact anybody, and it certainly gives  
9 the settlement process some time.

10           CO-HEARING OFFICER BAGGETT: Let's go off the  
11 record. Back in five.

12           (Recess)

13           CO-HEARING OFFICER BAGGETT: The schedule that  
14 we've worked out: It's 45 days from Monday -- from two  
15 weeks from Monday. So what date is that? Is there a  
16 calendar down there?

17           WATER RESOURCE CONTROL ENGINEER MONA: The  
18 transcripts will be due on August 25th. So 45 days  
19 from that date.

20           CO-HEARING OFFICER BAGGETT: We are going to  
21 allow what I refer to as the Plaintiff and the  
22 Defendant, will be limited to 25 pages. And all other  
23 parties 15.

24           The reply briefs will be due 30 days after  
25 that 45-day period. And we'll allow the parties 20

1 pages and -- the principals, the Cal Am and the  
2 Prosecution Team will be allowed 20 pages for a reply  
3 brief. All other parties 10 pages for reply briefs.

4 We are going to schedule a status conference  
5 on September 17th, and if you can appear telephonically  
6 we will make a number available. If you want to appear  
7 in person we'll have a room and designate that room.

8 The status conference at 9:00 a.m., we will  
9 meet with the Cal Am and the Prosecution Team, and then  
10 we'll invite all parties, all other parties at  
11 10 o'clock to join in and see where we're at.

12 At that status conference, after the  
13 10 o'clock meeting, if the parties can agree to a cause  
14 to delay the briefs farther, we will do that. If  
15 people feel like there is no progress being made, and  
16 parties do, then we can extend that.

17 But I think that's the schedule.

18 And brief issues, do you want to talk about?

19 MR. LAREDO: Mr. Baggett, will you accept some  
20 comment on what you've said so far?

21 MR. SATO: Could I ask a question?

22 CO-HEARING OFFICER BAGGETT: We'll take  
23 questions.

24 MR. SATO: On the status conference on  
25 September 17th, are you expecting any kind of written

1 statement from the parties before then?

2 CO-HEARING OFFICER BAGGETT: No, we just want  
3 to allow the parties, if there is a reason -- I mean if  
4 you all say there's no reason to meet, there's no  
5 reason to meet.

6 But if there is, we would like to allow an  
7 opportunity for the Prosecution and Cal Am to meet, and  
8 then we'll allow all the parties to meet. There will  
9 be no decisions made, but it will just give us the  
10 status.

11 CO-HEARING OFFICER WOLFF: I'm sorry. Before  
12 we take comments, I think we should tell you what the  
13 issues are we want you to brief. Someone had a comment  
14 on page limits. Is that reasonable?

15 MR. RUBIN: Before we get to that, are there  
16 any issues with the Hearing Officers and the Hearing  
17 Team meeting with the Prosecution Team and Cal Am in  
18 terms of ex parte communications?

19 CO-HEARING OFFICER BAGGETT: In terms of the  
20 settlement?

21 MR. RUBIN: I don't know.

22 CO-HEARING OFFICER BAGGETT: It's been done  
23 once on Lake Arrowhead.

24 MR. RUBIN: I just don't want to get into a  
25 position going through however many days we have now,

1 and a party asserting that there's been ex parte  
2 communications that preclude either of the two Hearing  
3 Officers from ultimately deciding the case.

4 CO-HEARING OFFICER BAGGETT: Okay. We will  
5 research that, but at this point we will -- that's the  
6 tentative schedule.

7 I can assure you it has been once in my years.  
8 That was the Lake Arrowhead case here my college, Mr.  
9 Katz, met with parties separately in an attempt to  
10 settle in this very room.

11 (Discussion off the record)

12 CO-HEARING OFFICER BAGGETT: The issues I have  
13 written down of particular interest, I think some of  
14 the information is coming, so it's really not a  
15 briefing issue. But it's something we would --  
16 obviously we're interested in, is if there is a remedy  
17 in the breakout between the various types of uses. And  
18 we were asking for that information, so that is  
19 something that is obviously of interest.

20 The legal issues that we have asked to be  
21 mentioned, we would allow parties to brief the Public  
22 Trust and its implications if they so desire. I think  
23 we made that commitment to the Public Trust Alliance  
24 and the parties are willing to -- I don't know if it  
25 has to be lengthy briefs. I mean it's the law. So you

1 can brief however you feel that issue. We made a  
2 commitment.

3 Second was whether 95-10, I think an issue  
4 that came up in the liability phase, does it authorize  
5 the diversions by Cal Am? Are they authorized under  
6 95-10? That was clearly a legal issue raised.

7 Likewise obviously the related liability  
8 issues of diligence under that section 95-10.

9 And as the diligence, the legal test, how  
10 would you define it? Has diligence been applied?

11 Those are the issues, the legal issues I have.  
12 Gary, do you have a couple others?

13 CO-HEARING OFFICER WOLFF: I might have one  
14 other, which was the issue of the legal authority of  
15 California American to either voluntarily or through  
16 mandatory measures reduce or curtail water use to the  
17 customers.

18 I appreciate the testimony of the Cal American  
19 witnesses; but none are attorneys, and I'd feel much  
20 more comfortable with that issue briefed by the  
21 attorneys.

22 CO-HEARING OFFICER BAGGETT: Any other?

23 CHIEF COUNSEL TAYLOR: No.

24 CO-HEARING OFFICER BAGGETT: No.

25 MR. LAREDO: With your indulgence, with

1 respect to the page limits on the closing briefs: I  
2 have to emphasize that Cal Am is not the only real  
3 party in interest, it's not the only party that's  
4 greatly affected by this.

5           If there is a water reduction imposed as a  
6 remedy, the community suffers that. Cal Am will just  
7 abide by whatever number you have, but it is the  
8 community that suffers.

9           If there are capital works that are required  
10 to be constructed as a remedy, the community suffers.  
11 Cal Am will make that capital investment, earn a profit  
12 on it, and the community will pay the higher rates that  
13 relate to that.

14           If there is a moratorium, Cal Am will abide by  
15 it, but it's the community that suffers. The only  
16 remedy that would directly affect Cal Am would be a  
17 penalty they could not recover in rates.

18           I believe for those reasons all the -- at  
19 least the Monterey Peninsula Water Management District  
20 should have an opportunity to have the same ability to  
21 comment by reply and closing brief as the other  
22 parties.

23           CO-HEARING OFFICER BAGGETT: We did make it  
24 clear that if the cities and people wanted to combine  
25 briefs, as far as I think we're concerned it's the same

1 number of pages. You can combine pages and join  
2 together however you want.

3 I mean, I think the issues are the issues, and  
4 total page limits -- you have about 60 pages. I would  
5 hope that there's not 60 briefs for 60 pages, but -- so  
6 we don't have to do the same legal theory eight times.

7 Does any other party have a problem with page  
8 limits? Is that sufficient?

9 MR. FIFE: We do echo Mr. Laredo's comments.  
10 We do think we should have the same -- no different  
11 page limits that Cal Am.

12 MR. SILVER: I would like to urge that if you  
13 extend it for Cal Am and the cities, I think certainly  
14 Sierra Club should be included in that as well.

15 CO-HEARING OFFICER BAGGETT: If we extend it  
16 for one, we have to extend it for all. So, I mean,  
17 that's --

18 MR. RUBIN: I wasn't sure if you were finished  
19 with your issues. You went through the legal issues.  
20 Were there other issues that you wanted briefed?

21 And I guess I based my request on some of the  
22 work we've already done for our closing brief. I don't  
23 know if it makes sense at this point to keep this  
24 schedule -- page limit and entertain requests for  
25 extension for good cause, if that's a good way to

1 approach. But again, I'm very concerned about 18  
2 parties filing 25 pages of briefing.

3 And I understand Mr. Laredo and the  
4 municipality's position. But again, ultimately, this  
5 is on -- in terms of the process, it's on California  
6 American Water. The practical effects may extend, but  
7 in terms of the order issuing it is against California  
8 American Water, those issues, if it does issue.

9 CO-HEARING OFFICER BAGGETT: I think that's an  
10 appropriate suggestion.

11 The page limits will stand unless a party can  
12 made a showing or file a request for additional briefs  
13 once they start working on it. If you need additional  
14 pages, you can extend it. But I think we want to try  
15 to limit it as much as we can. If you need additional  
16 pages, just file on it, send an electronic notice to us  
17 and --

18 CO-HEARING OFFICER WOLFF: I just would also  
19 emphasize there is the opportunity between now and  
20 September 17th or 15th for the parties to discuss even  
21 in the absence of a settlement of some sort for the  
22 parties to discuss the ability to combine briefs and  
23 make use of maximum combined length and you may be able  
24 to work that out and we can discuss this issue again at  
25 that time.

1 CO-HEARING OFFICER BAGGETT: Anything else?

2 If not --

3 CO-HEARING OFFICER WOLFF: I wanted to say a  
4 thank you. To thank Mr. Taylor, for his voluntary  
5 service --

6 CO-HEARING OFFICER BAGGETT: Voluntary  
7 service.

8 CO-HEARING OFFICER WOLFF: -- due to the  
9 Governor. He is a retired annuitant who is not being  
10 paid for these days due to the recent gubernatorial  
11 order.

12 I also wanted to thank all of the parties. I  
13 know this is a little schmaltzy or whatever, but I find  
14 it amazing to sit on this dais and sit through these  
15 proceedings, and to live in this country. You know,  
16 your behavior here in these seven days, even though,  
17 you know, at times tempers flared, there were  
18 objections flying, or whatever, it is nonetheless  
19 strikingly different behavior than exists in many parts  
20 of the world, and I greatly appreciate the civility  
21 where we can work out our issues peacefully. And I  
22 thank you all for that.

23 CO-HEARING OFFICER BAGGETT: We just hope Mr.  
24 Taylor makes it out of the building without tripping.

25 (Laughter)

1 CHIEF COUNSEL TAYLOR: I'll wait till  
2 everybody's left.

3 CO-HEARING OFFICER BAGGETT: With that, I echo  
4 Gary's comments, and thank you. And we'll be seeing  
5 you soon.

6 \* \* \*

7 (Thereupon the WATER RESOURCES CONTROL  
BOARD hearing adjourned at 4:01 p.m.)

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2 I, LINDA KAY RIGEL, a Certified Shorthand  
3 Reporter of the State of California, do hereby certify:

4 That I am a disinterested person herein; that  
5 the foregoing WATER RESOURCES CONTROL BOARD hearing was  
6 reported in shorthand by me, Linda Kay Rigel, a  
7 Certified Shorthand Reporter of the State of  
8 California, and thereafter transcribed into  
9 typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said meeting nor in  
12 any way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my  
14 hand this August 25, 2008.

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